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The Constitutions
OF THE
United States
AND OF THE
State of Ohio 649
49
1913

Thoroughly Annotated and Indexed

BY

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CINCINNATI
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LAW BOOK PUBLISHERS
1913

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The Declaration of Independence—1776.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of Immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Providence, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of war-fare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

NEW HAMPSHIRE.

JOSIAH BARTLETT,
WM. WHIPPLE,

MATTHEW THORNTON.

MASSACHUSETTS BAY.

SAML. ADAMS,
JOHN ADAMS,

ROBT. TREAT PAINE,
ELBRIDGE GERRY.

RHODE ISLAND.

STEP. HOPKINS,

WILLIAM ELLERY.

CONNECTICUT.

ROGER SHERMAN,
SAM'EL HUNTINGTON,

WM. WILLIAMS,
OLIVER WOLCOTT.

NEW YORK.

WM. FLOYD,
PHIL. LIVINGSTON,

FRANS. LEWIS,
LEWIS MORRIS.

NEW JERSEY.

RICHD. STOCKTON,
JNO. WITHERSPOON,
FRAS. HOPKINSON,

JOHN HART,
ABRA. CLARK.

PENNSYLVANIA.

ROBT. MORRIS,
BENJAMIN RUSH,
BENJA. FRANKLIN,
JOHN MORTON,
GEO. CLYMER,

JAS. SMITH,
GEO. TAYLOR,
JAMES WILSON,
GEO. ROSS.

DELAWARE.

CAESAR RODNEY.
GEO. READ,

THO. M'KEAN.

MARYLAND.

SAMUEL CHASE,
WM. PACA,THOS. STONE,
CHARLES CARROLL of Carrollton.

VIRGINIA.

GEORGE WYTHE,
RICHARD HENRY LEE,
TH. JEFFERSON.
BENJA. HARRISON,THOS. NELSON, JR.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

NORTH CAROLINA.

WM. HOOPER,
JOSEPH HEWES,

JOHN PENN.

SOUTH CAROLINA.

EDWARD RUTLEDGE,
THOS. HEYWARD, JUNR.,THOMAS LYNCH, JUNR.,
ARTHUR MIDDLETON.

GEORGIA.

BUTTON GWINNETT,
LYMAN HALL,

GEO. WALTON.

NOTE.—Mr. Ferdinand Jefferson, Keeper of the Rolls in the Department of State, at Washington, says: “The names of the signers are spelt above as in the fac-simile of the original, but the punctuation of them is not always the same; neither do the names of the States appear in the fac-simile of the original. The names of the signers of each State are grouped together in the fac-simile of the original, except the name of Matthew Thornton, which follows that of Oliver Wolcott.”

Articles of Confederation—1777.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy-seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

Articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina. South-Carolina and Georgia.

ARTICLE I. The stile of this confederacy shall be “The United States of America.”

ARTICLE II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Referred to: *Railway v. State*, 11 O. C. C. (N.S.) 482, 21 O. C. D. 20 [affirming *State v. Railway*, 7 O. N. P. (N.S.) 541, 19 O. D. (N.P.) 285, and affirmed in *Railway v. State*, 82 O. S. 60].

See *Woodruff v. Parham*, 75 U. S. (8 Wall.) 123; *Legal Tender Case*, 110 U. S. 421.

ARTICLE III. The said States hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Minor v. Happersett, 88 U. S. (21 Wall.) 162.

ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

Passenger Cases, 48 U. S. (7 How.) 283; *Scott v. Sanford*, 60 U. S. (19 How.) 393; *Woodruff v. Parham*, 75 U. S. (8 Wall.) 123.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

Passenger Cases, 48 U. S. (7 How.) 283; *Woodruff v. Parham*, 75 U. S. (8 Wall.) 123.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States, in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII. When land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Ware v. Hylton, 3 U. S. (3 Dall.) 199.

ARTICLE IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

Waring v. Clarke, 46 U. S. (5 How.) 441; *Woodruff v. Parham*, 75 U. S. (8 Wall.) 123.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress,

stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they can not agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

Rhode Island v. Massachusetts, 37 U. S. (12 Pet.) 657; *Missouri v. Illinois*, 180 U. S. 208.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States.—fixing the standard of weights and measures throughout the United States.—regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated—establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

Worcester v. Georgia, 31 U. S. (6 Pet.) 515.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

Legal Tender Case, 110 U. S. 421; Scott v. Sanford, 60 U. S. (19 How.) 393.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Downes v. Bidwell, 182 U. S. 244.

ARTICLE XII. All bills of credit emitted, moneys borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

ARTICLE XIII. Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it has pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we re[s]pectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.

On the part & behalf of the State of New Hampshire.

JOSIAH BARTLETT,

JOHN WENTWORTH, Junr.,
August 8th, 1778.

On the part and behalf of the State of Massachusetts Bay.

JOHN HANCOCK,
SAMUEL ADAMS,
ELDRIDGE GERRY,

FRANCIS DANA,
JAMES LOVELL,
SAMUEL HOLTEN.

On the part and behalf of the State of Rhode Island and Providence Plantations.

WILLIAM ELLERY,
HENRY MARCHANT,

JOHN COLLINS.

On the part and behalf of the State of Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
OLIVER WOLCOTT,

TITUS HOSMER,
ANDREW ADAMS.

On the part and behalf of the State of New York.

JAS. DUANE,
FRA. LEWIS,

WM. DUER,
GOUV. MORRIS.

On the part and in behalf of the State of New Jersey, Novr. 26, 1778.

JNO. WITHERSPOON,

NATHL. SCUDDER.

On the part and behalf of the State of Pennsylvania.

ROBT. MORRIS,
DANIEL ROBERDEAU,
JONA. BAYARD SMITH,

WILLIAM CLINGAN,
JOSEPH REED, 22d July, 1778

On the part & behalf of the State of Delaware.

THO. M'KEAN, Feby. 12, 1779.
JOHN DICKINSON, May 5th, 1779.

NICHOLAS VAN DYKE.

On the part and behalf of the State of Maryland.

JOHN HANSON, March 1, 1781.

DANIEL CARROLL, Mar. 1, 1781.

On the part and behalf of the State of Virginia.

RICHARD HENRY LEE,
JOHN BANNISTER,
THOMAS ADAMS,

JNO. HARVIE,
FRANCIS LIGHTFOOT LEE.

On the part and behalf of the State of No. Carolina.

JOHN PENN, July 21st, 1778.
CORNS. HARNETT,

JNO. WILLIAMS.

On the part & behalf of the State of South Carolina.

HENRY LAURENS,
WILLIAM HENRY DRAYTON,
JNO. MATHEWS,

RICHD. HUTSON,
THOS. HEYWARD, Junr.

On the part & behalf of the State of Georgia.

JNO. WALTON, 24th July, 1778.
EDWD. TELFAIR,

EDWD. LANGWORTHY.

Constitution of the United States—1787.

We THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

Minor v. Happersett, 88 U. S. (21 Wall.) 162.

ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Dodge v. Woolsey, 59 U. S. (18 How.) 331, 3 O. F. D. 300; United States v. Harris, 106 U. S. (16 Otto) 629; In re Neagle, 135 U. S. 1; Field v. Clark, 143 U. S. 649; State v. Russell, 20 O. C. C. 551, 11 O. C. D. 299.

SECTION 2. ¹ The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Minor v. Happersett, 88 U. S. (21 Wall.) 162; Ex parte Yarbrough, 110 U. S. 651; In re Green, 134 U. S. 377; McPherson v. Blacker, 146 U. S. 1; Pope v. Williams, 193 U. S. 621.

State v. Russell, 20 O. C. C. 551, 11 O. C. D. 299.

² No person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Boyd v. Nebraska, ex rel., 143 U. S. 135; United States v. Wong Kim Ark, 169 U. S. 649.

³[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and

Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Hylton v. United States (3 Dall.) 171; *Loughborough v. Blake*, 18 U. S. (5 Wheat.) 317; *Groves v. Slaughter*, 40 U. S. (15 Pet.) 449; *Smith v. Turner*, 48 U. S. (7 How.) 283; *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Insurance Co. v. Soule*, 74 U. S. (7 Wall.) 433; *De Treville v. Smalls*, 98 U. S. (8 Otto) 517; *Elk v. Wilkins*, 112 U. S. 94; *Pollock v. Trust Co.*, 157 U. S. 429; *Downes v. Bidwell*, 182 U. S. 244; *Thomas v. United States*, 192 U. S. 363; *United States v. Mitchell*, 8 O. F. D. 71, 58 Fed. 993.

⁴ When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

McPherson v. Blacker, 146 U. S. 1.

⁵ The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. ¹ The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Dodge v. Woolsey, 59 U. S. (18 How.) 331, 3 O. F. D. 300; *Miner v. Happersett*, 88 U. S. (21 Wall.) 162; *In re Green*, 134 U. S. 377.

² Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

³ No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Boyd v. Nebraska, 143 U. S. 135; *United States v. Wong Kim Ark*, 169 U. S. 649.

⁴ The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

⁵ The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

⁶ The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the concurrence of two thirds of the Members present.

⁷ Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Art.I, § 4. **CONSTITUTION OF THE UNITED STATES.**

SECTION 4. ¹ The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Dodge v. Woolsey, 59 U. S. (18 How.) 331, 3 O. F. D. 300; *Dred Scott v. Sanford*, 60 U. S. (19 How.) 393; *Minor v. Happersett*, 88 U. S. (21 Wall.) 162; *United States v. Reese*, 92 U. S. 214; *Ex parte Yarbrough*, 110 U. S. 651; *McPherson v. Blacker*, 146 U. S. 1; *State v. Russell*, 10 O. D. (N.P.) 255.

² The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Mining Co. v. United States, 175 U. S. 423.

SECTION 5. ¹ Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of Absent Members, in such Manner, and under such Penalties as each House may provide.

Dodge v. Woolsey, 59 U. S. (18 How.) 331, 3 O. F. D. 300; *In re Loney*, 134 U. S. 372; *Renner v. Bennett*, 21 O. S. 431.

² Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member.

Kilbourn v. Thompson, 103 U. S. 168.

³ Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one-fifth of those present, be entered on the Journal.

Field v. Clark, 143 U. S. 649; *United States v. Ballin*, 144 U. S. 1; *Wilkes County v. Coler*, 180 U. S. 506.

⁴ Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Mining Co. v. United States, 175 U. S. 423.

SECTION 6. ¹ The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Dodge v. Woolsey, 59 U. S. (18 How.) 331, 3 O. F. D. 300; *Burton v. United States*, 196 U. S. 283; *Williamson v. United States*, 207 U. S. 425.

² No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION 7. ¹ All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills.

Dodge v. Woolsey, 59 U. S. 331, 3 O. F. D. 300; *United States v. Norton*, 91 U. S. 566; *Bank v. Nebeker*, 167 U. S. 196; *Millard v. Roberts*, 202 U. S. 429; *Flint v. Stone, Tracy Co.*, 220 U. S. 107.

² Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which case it shall not be a Law.

Burgess v. Salmon, 97 U. S. (7 Otto) 381; *Church v. United States*, 143 U. S. 457,

³ Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Mining Co. v. United States, 175 U. S. 423; *Fourteen Diamond Rings v. United States*, 183 U. S. 176.

SECTION 8. ¹ The Congress shall have Power To lay and collect Taxes Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

The statutes creating the railroad commission G. C. § 487, et seq., are valid and constitutional: *Railroad v. Railroad Commission*, 21 O. D. (N.P.) 468.

For general references to the entire section see:

M'Culloch v. Maryland, 17 U. S. (4 Wheat.) 316; *Dodge v. Woolsey*, 59 U. S. 331, 3 O. F. D. 300; *Elk v. Wilkins*, 112 U. S. 94; *Minnesota v. Barber*, 136 U. S. 313; *Benson v. United States*, 146 U. S. 325; *Zadig v. Baldwin*, 166 U. S. 485; *Nichol v. Ames*, 173 U. S. 509; *Lawder v. Stone*, 187 U. S. 281; *Whaling Co. v. United States*, 187 U. S. 447; *Cornell v. Coyne*, 192 U. S. 418; *Kansas v. Colorado*, 206 U. S. 46.

Collet v. Collet, 2 U. S. (2 Dall.) 294; *Hylton v. United States*, 3 U. S. (3 Dall.) 171; *Loughborough v. Blake*, 18 U. S. (5 Wheat.) 317; *Smith v. Turner*, 48 U. S. (7 How.) 283; *Marriott v. Brune*, 50 U. S. (9 How.) 619; *Cooley v. Board of Wardens*, 53 U. S. (12 How.) 299; *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Pennsylvania v. Bridge Co.*, 59 U. S. (18 How.) 421; *Hadden v. The Collector*, 72 U. S. (5 Wall.) 107; *Hamilton Co. v. Mass*, 73 U. S. (6 Wall.) 632; *Insurance Co. v. Soule*, 74 U. S. (7 Wall.) 433; *Woodruff v. Parham*, 75 U. S. (8 Wall.) 123; *Scholey v. Rew*, 90 U. S. (23 Wall.) 331; *Springer v. United States*, 102 U. S. 586; *Van Brocklin v. Tennessee*, 117 U. S. 151; *United States v. Hill*, 123 U. S. 681; *Field v. Clark*, 143 U. S. 649; *United States v. Snyder*, 149 U. S. 210; *United States v. Realty Co.*, 163 U. S. 427; *Knowlton v. Moore*, 178 U. S. 41; *Fairbank v. United States*, 181 U. S. 283; *Downes v. Bidwell*, 182 U. S. 244; *Dooley v. United States*, 183 U. S. 151; *Patton v. Brady*, 184 U. S. 608; *Snyder v. Bettman*, 190 U. S. 249; *Thomas v. United States*, 192 U. S. 363; *Binns v. United States*, 194 U. S. 486; *South Carolina v. United States*, 199 U. S. 437; *North Dakota, ex rel., v. Hanson*, 215 U. S. 515; *Flint v. Stone, Tracy Co.*, 220 U. S. 107 [distinguishing *Pollock v. Farmers Loan and Trust Co.*, 157 U. S. 429, 158 U. S. 601].

² To borrow Money on the credit of the United States;

Weston v. Charleston, 27 U. S. (2 Pet.) 449; *United States v. In-Lots*, 4 O. F. D. 253, *Fed. Cases*, 15441a.

Art.I, § 8. CONSTITUTION OF THE UNITED STATES.

³ To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes;

Cherokee Nation v. Georgia, 30 U. S. (5 Pet.) 1; Worcester v. Georgia, 31 U. S. (6 Pet.) 515; Groves v. Slaughter, 40 U. S. (15 Pet.) 449; License Cases, 46 U. S. (5 How.) 504; Smith v. Turner, 48 U. S. (7 How.) 283; Cooley v. Board of Wardens, 53 U. S. (12 How.) 299; Conway v. Taylor, 66 U. S. (1 Black) 603; Steamship Co. v. Joliffe, 69 U. S. (2 Wall.) 450; Railroad Co. v. Pennsylvania, 82 U. S. (15 Wall.) 232, 82 U. S. (15 Wall.) 284; Railroad Co. v. Fuller, 84 U. S. (17 Wall.) 560; Henderson v. Mayor, 92 U. S. (2 Otto) 259; Munn v. Illinois, 94 U. S. (4 Otto) 113; Foster v. Master and Wardens, 94 U. S. (4 Otto) 246; McCready v. Virginia, 94 U. S. (4 Otto) 391; Railroad Co. v. Husen, 95 U. S. (5 Otto) 465; Hall v. De Cuir, 95 U. S. (5 Otto) 485; Telegraph Co. v. Telegraph Co., 96 U. S. (6 Otto) 1; Cook v. Pennsylvania, 97 U. S. (7 Otto) 566; Machine Co. v. Gage, 100 U. S. (10 Otto) 676; Lord v. Steamship Co., 102 U. S. (12 Otto) 541; People v. Commissioners, 104 U. S. (14 Otto) 466; Turner v. Maryland, 107 U. S. (17 Otto) 38; Cooper v. New Orleans, 112 U. S. 69; Brown v. Houston, 114 U. S. 622; Walling v. Michigan, 116 U. S. 446; Railway v. Illinois, 118 U. S. 557; United States v. Arjona, 120 U. S. 479; Fargo v. Michigan, 121 U. S. 230; Mining Co. v. Pennsylvania, 125 U. S. 181; Bowman v. Railway Co., 125 U. S. 465; Kidd v. Pearson, 128 U. S. 1; Leisy v. Hardin, 135 U. S. 100; McCall v. California, 136 U. S. 104; Budd v. New York, 143 U. S. 517; O'Neil v. Vermont, 144 U. S. 323; Ficklen v. Taxing District, 145 U. S. 1; Brass v. North Dakota, ex rel., 153 U. S. 391; Interstate Commerce Commission v. Brimson, 154 U. S. 447; Coal Co. v. Bates, 156 U. S. 577; In re Debs, 158 U. S. 564; Geer v. Connecticut, 161 U. S. 519; Telegraph Co. v. James, 162 U. S. 650; Railroad Co. v. New York, 165 U. S. 628; Rhodes v. Iowa, 170 U. S. 412; Vance v. Vandercook Co., 170 U. S. 438; Guano v. Board of Agriculture, 171 U. S. 345; Insurance Co. v. Cravens, 178 U. S. 389; May v. New Orleans, 178 U. S. 496; Williams v. Fears, 179 U. S. 270; Railroad v. Jacobson, 179 U. S. 287; Austin v. Tennessee, 179 U. S. 343; Dooley v. United States, 183 U. S. 151; Dairy Co. v. Ohio, 183 U. S. 238; McChord v. Railroad Co., 183 U. S. 483; Railroad Co. v. Eubank, 184 U. S. 27; Match Co. v. Ontonagon, 188 U. S. 82; Cummings v. Chicago, 188 U. S. 410; United States v. Lynah, 188 U. S. 445; Arbuckle v. Blackburn, 191 U. S. 405; New York, ex rel., v. Knight, 192 U. S. 21; Field v. Paving Co., 194 U. S. 618; Johnson v. Southern Pacific Co., 196 U. S. 1; Fullerton v. Texas, 196 U. S. 192; Steamship Co. v. Grube, 196 U. S. 407; Railroad Co. v. Mayes, 201 U. S. 321; Cox v. Texas, 202 U. S. 446; McNeill v. Railway Co., 202 U. S. 543; Railroad Co. v. Miller, 202 U. S. 584; New Mexico, ex rel., v. Railroad Co., 203 U. S. 38; Bridge Co. v. Hager, 203 U. S. 109; Heyman v. Railway Co., 203 U. S. 270; Martin v. Railroad Co., 203 U. S. 284; Railroad Commission v. Railroad Co., 203 U. S. 335; Rearick v. Pennsylvania, 203 U. S. 507; New York, ex rel., v. Reardon, 204 U. S. 152; Delamater v. South Dakota, 205 U. S. 93; The Winnebago, 205 U. S. 354; Express Co. v. Kentucky, 206 U. S. 129; Railroad v. Wharton, 207 U. S. 328; Lee v. New Jersey, 207 U. S. 67; Employer's Liability Cases, 207 U. S. 463; Darnell v. Memphis, 208 U. S. 113; Adair v. United States, 208 U. S. 161, 208 U. S. 177; Dick v. United States, 208 U. S. 340; Water Co. v. McCarter, 209 U. S. 349; Railway v. Texas, 210 U. S. 217; St. Louis, Iron Mountain and S. Ry. v. Taylor, 210 U. S. 281; Silz v. Hesterberg, 211 U. S. 31; Railway v. United States, 212 U. S. 481; United States, ex rel., v. Railway, 213 U. S. 366; District of Columbia v. Brooke, 214 U. S. 138; Express Co. v. Kentucky, 214 U. S. 218; Railway v. Gutierrez, 215 U. S. 87; Telegraph Co. v. Kansas, ex rel., 216 U. S. 1; Railway v. Kansas, ex rel., 216 U. S. 262; Ludwig v. Telegraph Co., 216 U. S. 146; Railway v. Mazursky, 216 U. S. 122; Pullman Co. v. Kansas, ex rel., 216 U. S. 56; Bridge Co. v. United States, 216 U. S. 177; Brown-Forman Co. v. Kentucky, 217 U. S. 563; Textbook Co. v. Pigg, 217 U. S. 91; Oil Co. v. Tennessee, 217 U. S. 413; Railway v. Arkansas, 217 U. S. 136; Railway v. King, 217 U. S. 524; Herndon v. Railway, 218 U. S. 135; Dozier v. Alabama, 218 U. S. 124; Telegraph Co. v. Milling Co., 218 U. S. 406; Atlantic Coast Line R. R. v. Riverside Mills, 219 U. S. 186; Broadnax v. Missouri, 219 U. S. 285; Engel v. O'Malley, 219 U. S. 128; Chicago, Rock Island and Pacific Ry. v. Arkansas, 219 U. S. 453; Louisville and Nashville R. R. v. Mottley, 219 U. S. 467; Chicago, Burlington and Quincy Ry. v. United States, 220 U. S. 559; Baltimore and Ohio R. R. Co. v. Interstate Commerce Commission, 221 U. S. 613; Raguet v. Wade, 4 O. 107; Newton, et al., v. Board of Commissioners of Mahoning Co., 26 O. S. 618; Western Union Telegraph Co. v. Mayer, 28 O. S. 521; McGuire v. State, 42 O. S. 530; Arnold v. Yanders, 56 O. S. 417; L. S. & M. S. Ry. Co. v. State, ex rel., 8 O. C. C. 220, 4 O. C. D. 406 [affirmed, no report, 56 O. S. 736, 1 O. S. U. 581, 37 Bull. 193]; In re Oscar Julius, 4 O. C. C. (N.S.) 604, 16 O. C. D. 423; Uhrlaub v. Cincinnati, et al., 8 O. C. C. (N.S.) 505, 18 O. C. D. 797 [affirmed, no report, 72 O. S. 667]; D. T. & I. Ry. Co. v. State, 11 O. C. C. (N.S.) 482, 21 O. C. D. 20; Detroit, Toledo & Ironton Ry. Co. v. State, 82 O. S. 60; State of Ohio v. Yanders, 7 O. N. P. 659; In re Yanders, 1 O. N. P. 190; Fitton v. State, 1 O. N. P. 133, 14 O. D. (N.P.) 156; State v. Bridge Co., 18 O. D. (N.P.) 273; Chemical Co. v. Calvert, 8 O. N. P. (N.S.) 361, 19 O. D. (N.P.) 571; Railroad v. Railroad Commission, 8 O. N. P. (N.S.) 233; Flemm v. Railway, 10 O. N. P. (N.S.) 273, 21 O. D. (N.P.) 152; Adams Express Co. v. Ohio State Auditor, 10 O. F. D. 655, 165 U. S. 194; Railway Co. v. Ohio, 12 O. F. D. 376, 173 U. S. 285; Dairy Co. v. Ohio, 14 O. F. D. 12, 183 U. S. 238; Arbuckle v. Blackburn, 191 U. S. 189, 14 O. F. D. 321.

The statutes creating the railroad commission G. C. § 478, et seq., are valid and constitutional: Railroad v. Railroad Commission, 21 O. D. (N.P.) 468.

⁴ To establish an uniform Rule of Naturalization, ¹ and uniform Laws on the subject of Bankruptcies throughout the United States; ²

Sturges v. Crowninshield, 17 U. S. (4 Wheat.) 122; Cook v. Moffat, 46 U. S. (5 How.) 295; Minor v. Happersett, 88 U. S. (21 Wall.) 162; Boyd v. Nebraska, ex rel., 143 U. S.

135; *Bank v. Moyses*, 186 U. S. 181; *Holmgren v. United States*, 217 U. S. 509; *Carpenter Bros. v. O'Connor*, 16 O. C. C. 526, 9 O. C. D. 201 [affirmed, no report, *Carpenter Bros. v. O'Connor*, 60 O. S. 605]; *In re McKay*, 13 O. F. D. 570, 1 Am. Bankruptcy Rep. 292; *Stearns v. Flick*, 11 O. F. D. 473, 4 Am. Bankruptcy Rep. 723; *In re Strauss*, 11 O. F. D. 168, Fed. Cases, 13532.

⁵ To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Fox v. State of Ohio, 2 O. F. D. 499, 512, 46 U. S. (5 How.) 410; *United States v. Marigold*, 50 U. S. (9 How.) 560; *Roosevelt v. Meyer*, 68 U. S. (1 Wall.) 512; *Legal Tender Cases*, 79 U. S. (12 Wall.) 457; *Rae v. Loan & Guaranty Co.*, 176 U. S. 121; *Su Fan v. United States*, 218 U. S. 302.

⁶ To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

Fox v. State of Ohio, 46 U. S. (5 How.) 410, 2 O. F. D. 499; *United States v. Marigold*, 50 U. S. (9 How.) 560.

⁷ To establish Post Offices and post Roads;

Telegraph Co. v. Telegraph Co., 96 U. S. (6 Otto) 1; *In re Debs*, 158 U. S. 564; *Martin v. Railway*, 203 U. S. 284.

⁸ To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Wheaton v. Peters, 33 U. S. (8 Pet.) 591; *Wilson v. Rousseau*, 45 U. S. (4 How.) 646; *Kendall v. Winsor*, 62 U. S. (21 How.) 322; *Lithographic Co. v. Sarony*, 111 U. S. 53; *Butterworth v. United States, ex rel.*, 112 U. S. 50; *Thompson v. Boisselier*, 114 U. S. 1; *Gardner v. Herz*, 118 U. S. 180; *Banks v. Manchester*, 128 U. S. 244; *United States v. Telephone Co.*, 128 U. S. 315; *Belknap v. Schild*, 161 U. S. 10; *Postal Supply Co. v. Bruce*, 194 U. S. 601; *Allen v. Riley*, 203 U. S. 347; *Tobacco Co. v. Werckmeister*, 207 U. S. 284; *Bobbs-Merrill Co. v. Straus*, 210 U. S. 339; *Tod v. Wick Bros. & Co.*, 36 O. S. 370; *Woolen v. Banker*, 4 O. F. D. 440, 2 Flip, 33, Fed. Cases, 18030; *Dewel v. Bohmer*, 4 O. F. D. 533, 2 Flip, 168, Fed. Cases, 4213; *United States v. In-Lots*, 4 O. F. D. 253; *Henry Bill Publishing Co. v. Smythe*, 5 O. F. D. 531, 27 Fed. 914, 16 Bull. 137; *Banks v. Manchester*, 6 O. F. D. 216, 128 U. S. 244; *Arbuckle v. Blackburn*, 13 O. F. D. 44, 51 C. C. A. 122, 113 Fed. 616.

⁹ To constitute Tribunals inferior to the supreme Court;

Downs v. Bidwell, 182 U. S. 244.

¹⁰ To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

United States v. Arjona, 120 U. S. 479; *State of Ohio v. Hogan*, 63 O. S. 202.

¹¹ To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

Brown v. United States, 12 U. S. (8 Cranch) 110; *Haycraft v. United States*, 89 U. S. (22 Wall.) 81; *Kirk v. Lynd*, 106 U. S. (16 Otto) 315.

¹² To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

Presser v. Illinois, 116 U. S. 252.

¹³ To provide and maintain a Navy;

¹⁴ To make Rules for the Government and Regulation of the land and naval Forces;

Dynes v. Hoover, 61 U. S. (20 How.) 65; *Ex parte Reed*, 100 U. S. (10 Otto) 13; *Johnson v. Sayre*, 158 U. S. 109; *Carter v. Roberts*, 177 U. S. 496; *Carter v. McClaughry*, 183 U. S. 365.

¹⁵ To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

Luther v. Borden, 48 U. S. (7 How.) 1.

Art.I, § 9. CONSTITUTION OF THE UNITED STATES.

¹⁶ To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the service of the United States, reserving to the States respectively, the Appointment of the Officers and the Authority of training the Militia according to the discipline prescribed by Congress;

¹⁷ To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Young v. Bank, 8 U. S. (4 Cranch) 384; Loughborough v. Blake, 18 U. S. (5 Wheat.) 317; Cohens v. Virginia, 19 U. S. (6 Wheat.) 264; Pollard v. Hagan, 44 U. S. (3 How.) 212; Willard v. Presbury, 81 U. S. (14 Wall.) 676; Railway Co. v. Lowe, 114 U. S. 525; Shoemaker v. United States, 147 U. S. 282; Palmer v. Barrett, 162 U. S. 399; Parsons v. United States, 167 U. S. 324; Stearns v. Minnesota, 179 U. S. 223; Steamship Co. v. Grube, 196 U. S. 407; Battle v. United States, 209 U. S. 36; Railway v. Gutierrez, 215 U. S. 87; Renner v. Bennett, 21 O. S. 431; United States v. In-Lots, 4 O. F. D. 253, Fed. Cases, 15441a.

¹⁸ To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

McCullough v. Maryland, 17 U. S. (4 Wheat.) 316; Ex parte Wells, 59 U. S. (18 How.) 307; Abelman v. Booth, 62 U. S. (21 How.) 506; Ex parte Garland, 71 U. S. (4 Wall.) 333; Legal Tender Cases, 79 U. S. (12 Wall.) 457; Tennessee v. Davis, 100 U. S. 257; Ex parte Curtis, 106 U. S. 371; United States v. Harris, 106 U. S. 629; Ex parte Yarbrough, 110 U. S. 651; United States v. Arjona, 120 U. S. 479; In re Neagle, 135 U. S. 1; Logan v. United States, 144 U. S. 263; Boske v. Comingore, 177 U. S. 459; Fairbank v. United States, 181 U. S. 283.

SECTION 9. ¹ The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

For general references to this section see:

McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316; Dodge v. Woolsey, 3 O. F. D. 300, 59 U. S. (18 How.) 331; Marvin v. Trout, 15 O. F. D. 141, 199 U. S. 213, 3 O. L. R. 550.

Groves v. Slaughter, 40 U. S. (15 Pet.) 449; Passenger Cases, 48 U. S. (7 How.) 283; Scott v. Sanford, 60 U. S. (19 How.) 393; People v. Transatlantic Co., 107 U. S. 59.

² The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Ex parte Burford, 7 U. S. (3 Cranch) 448; Luther v. Borden, 48 U. S. (7 How.) 1; Turner v. Williams, 194 U. S. 279; Fisher v. Baker, 203 U. S. 174.

³ No Bill of Attainder or ex post facto law shall be passed.

Barron v. Baltimore, 32 U. S. (7 Pet.) 243; Ex parte Garland, 71 U. S. (4 Wall.) 333; Presser v. Illinois, 116 U. S. 252; In re Neagle, 135 U. S. 1; Kepner v. United States, 195 U. S. 100.

⁴ No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

Hylton v. United States, 3 U. S. (3 Dall.) 171; Loughborough v. Blake, 18 U. S. (5 Wheat.) 317; Veazie Bank v. Fenno, 75 U. S. (8 Wall.) 533; Nicol v. Ames, 173 U. S. 509; Knowlton v. Moore, 178 U. S. 41; Downes v. Bidwell, 182 U. S. 244; Thomas v. United States, 192 U. S. 363; Cornell v. Coyne, 192 U. S. 418; South Carolina v. United States, 199 U. S. 437; United States v. Mitchell, 8 O. F. D. 71.

⁵ No Tax or Duty shall be laid on Articles exported from any State.

Marriott v. Brune, 50 U. S. (9 How.) 619; Insurance Co. v. Soule, 74 U. S. (7 Wall.) 433; Hinson v. Lott, 75 U. S. (8 Wall.) 148; Coal Co. v. Bates, 156 U. S. 577; Nicol v. Ames, 173 U. S. 509; Williams v. Fearn, 179 U. S. 270; Fairbank v. United States, 181 U. S. 283; Downes v. Bidwell, 182 U. S. 244; Dooley v. United States, 183 U. S. 151; Lowder v. Stone, 187 U. S. 281; Lottery Case, 188 U. S. 321; Cornell v. Coyne, 192 U. S. 418.

⁶ No Preference shall be given by any regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Gibbons v. Ogden, 22 U. S. (9 Wheat.) 1; Passenger Cases, 48 U. S. (7 How.) 283; Cooley v. Board of Wardens, 53 U. S. (12 How.) 299; Pennsylvania v. Bridge Co., 59 U. S. (18 How.) 421; Munn v. Illinois, 94 U. S. (4 Otto) 113; Steamship Co. v. Board of Health, 118 U. S. 455; Johnson v. Elevator Co., 119 U. S. 388; Budd v. New York, 143 U. S. 517; Downes v. Bidwell, 182 U. S. 244; Whaling Co. v. United States, 187 U. S. 447; Thompson v. Darden, 198 U. S. 310.

⁷ No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Brashear v. Mason, 47 U. S. (6 How.) 92; Reeside v. Walker, 52 U. S. (11 How.) 272; Railroad Co. v. Alabama, 101 U. S. 832; Hart v. United States, 118 U. S. 62; United States v. Johnson, 124 U. S. 236; Downes v. Bidwell, 182 U. S. 244.

⁸ No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. ¹ No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; ² emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; ³ pass any Bill of Attainder, ex post facto Law, ⁴ or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

For this section generally, see:

Fletcher v. Peck, 2 U. S. (6 Cranch, 87) 308; Cohens v. Virginia, 5 U. S. (6 Wheat. 264) 90; Cherokee Nation v. Georgia, 30 U. S. (5 Pet.) 1; Barron v. Baltimore, 32 U. S. (7 Pet.) 243; Rhode Island v. Massachusetts, 37 U. S. (12 Pet.) 657; Holmes v. Jennison, 39 U. S. (14 Pet.) 540; Prigg v. Pennsylvania, 41 U. S. (16 Pet.) 539; Pollard v. Files, 43 U. S. (2 How.) 591; Luther v. Borden, 48 U. S. (7 How.) 1; Florida v. Georgia, 58 U. S. (17 How.) 478; Ex parte Garland, 71 U. S. (4 Wall.) 333; Railroad v. Maguire, 87 U. S. (20 Wall.) 36; Minor v. Happersett, 88 U. S. (21 Wall.) 162; Hauenstein v. Lynham, 100 U. S. 483; New Hampshire v. Louisiana, 108 U. S. 76; Minnesota v. Barber, 136 U. S. 313; Bridge Co. v. Henderson City, 173 U. S. 592; Louisiana v. Texas, 176 U. S. 1; May v. New Orleans, 178 U. S. 496; Stearns v. Minnesota, 179 U. S. 223; Blythe v. Hinckley, 180 U. S. 333; De Lima v. Bidwell, 182 U. S. 1; Downes v. Bidwell, 182 U. S. 244; Kansas v. Colorado, 185 U. S. 125; Noble State Bank v. Haskell, 219 U. S. 104 (motion for leave to file petition for rehearing denied, Noble State Bank v. Haskell, 219 U. S. 575).

¹ United States v. Arjona, 120 U. S. 479.

² Craig v. Missouri, 29 U. S. (4 Pet.) 410; Gwin v. Breedlove, 43 U. S. (2 How.) 29; Curran v. Arkansas, 56 U. S. (15 How.) 304; Barings v. Dabney, 86 U. S. (19 Wall.) 1; Hagood v. Southern, 117 U. S. 52; Wesley v. Eells, 12 O. F. D. 161, 90 Fed. 151; Kentucky Union Co. v. Kentucky, 219 U. S. 140.

³ Carpenter v. Commonwealth, 58 U. S. (17 How.) 456; Kring v. Missouri, 107 U. S. 221; Medley, Petitioner, 134 U. S. 160; Hawker v. New York, 170 U. S. 189; Mallett v. North Carolina, 181 U. S. 589; Ughbanks v. Armstrong, 208 U. S. 481; Oil Co. v. Texas, 212 U. S. 86; Oil Co. v. Texas, 212 U. S. 112; France v. State, 57 O. S. 1; State v. Ottman, 4 O. N. P. 195, 6 O. D. (N.P.) 265.

⁴ Calder v. Bull, 3 U. S. (3 Dall.) 386; Fletcher v. Peck, 10 U. S. (6 Cranch) 87; State v. Wilson, 11 U. S. (7 Cranch) 164; Sturges v. Crowninshield, 17 U. S. (4 Wheat.) 122; Dartmouth College v. Woodward, 17 U. S. (4 Wheat.) 518; Ogden v. Saunders, 25 U. S. (12 Wheat.) 213; Bank v. Lessee, 27 U. S. (2 Pet.) 492; Bank v. Billings, 29 U. S. (4 Pet.) 514; Armstrong v. Athens Co., 2 O. F. D. 154, 41 U. S. (16 Pet.) 281; Bronson v. Kinzie, 42 U. S. (1 How.) 311; Gordon v. Tax Court, 44 U. S. (3 How.) 133; Cook v. Moffat, 46 U. S. (5 How.) 295; Bridge Co. v. Dix, 47 U. S. (6 How.) 507; Smith v. Hunter, 48 U. S. (7 How.) 738; Phalen v. Commonwealth, 49 U. S. (8 How.) 163; Mills v. County, 49 U. S. (8 How.) 569; Butler v. Commonwealth, 51 U. S. (10 How.) 402; Bank v. State, ex rel., 53 U. S. (12 How.) 1; Curran v. State, 56 U. S. (15 How.) 304; Bank v.

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Knoop, 57 U. S. (16 How.) 369; Dodge v. Woolsey, 3 O. F. D. 300, 59 U. S. (18 How.) 331; Aspinwall v. Commissioners, 63 U. S. (22 How.) 364; Farney v. Towle, 66 U. S. (1 Black) 350; Bank v. Skelly, 3 O. F. D. 681, 66 U. S. (1 Black) 436; Van Hoffman v. City, 71 U. S. (4 Wall.) 535; Curtis v. Whitney, 80 U. S. (13 Wall.) 68; Railroad Co. v. McClure, 77 U. S. (10 Wall.) 511; Pennsylvania College Cases, 80 U. S. (13 Wall.) 190; Delmas v. Insurance Co., 81 U. S. (14 Wall.) 661; Gunn v. Barry, 82 U. S. (15 Wall.) 610; Walker v. Whitehead, 83 U. S. (16 Wall.) 314; Railroad Co. v. Maguire, 87 U. S. (20 Wall.) 36; County v. Savings Bank, 92 U. S. 631; Insurance Co. v. Council, 93 U. S. 116; Farrington v. Tennessee, 95 U. S. 679; Newton v. Commissioners, 4 O. F. D. 555, 100 U. S. (10 Otto) 548; Railway Co. v. Philadelphia, 101 U. S. 528; Wright v. Nagle, 101 U. S. 791; Stone v. Mississippi, 101 U. S. 814; Barrett v. Holmes, 102 U. S. 651; Wolff v. New Orleans, 103 U. S. 358; Penniman's Case, 103 U. S. 714; Asylum v. New Orleans, 105 U. S. 362; Vance v. Vance, 108 U. S. 514; Louisiana, ex rel., v. New Orleans, 108 U. S. 568; Hoff v. County, 110 U. S. 53; Hagar v. Reclamation District, 111 U. S. 701; Landing Co. v. Slaughter House Co., 111 U. S. 746; Poindexter v. Greenhow, 114 U. S. 270; Carter v. Greenhow, 114 U. S. 317; Church v. Kelsey, 121 U. S. 282; In re Ayers, 123 U. S. 443; Administrators v. San Francisco, 124 U. S. 639; Waterworks Co. v. Refining Co., 125 U. S. 18; De Saussure v. Gaillard, 127 U. S. 216; Freeland v. Williams, 131 U. S. 405; Hans v. Louisiana, 134 U. S. 1; Railway Co. v. Minnesota, 134 U. S. 467; McGahey v. Virginia, 135 U. S. 662; Railway Co. v. City, 138 U. S. 98; Pennoyer v. McConnaughy, 140 U. S. 1; People, ex rel., v. Squire, 145 U. S. 175; Brown v. Smart, 145 U. S. 454; Morley v. Railway Co., 146 U. S. 162; Bier v. McGehee, 148 U. S. 137; Snell v. Chicago, 152 U. S. 191; New Orleans v. Benjamin, 153 U. S. 411; Railroad Co. v. Tennessee, 153 U. S. 486; Railway Co. v. Gill, 156 U. S. 649; Railroad Co. v. Louisiana, ex rel., 157 U. S. 219; Land Co. v. Minnesota, 159 U. S. 526; Bank v. Tennessee, 161 U. S. 134, 164; Hamilton v. Brown, 161 U. S. 256; Zadig v. Baldwin, 166 U. S. 485; Supply Co. v. Brooklyn, 166 U. S. 685; Hawker v. New York, 170 U. S. 189; Railway Co. v. Texas, 170 U. S. 226; Scudder v. Comptroller, 175 U. S. 32; Walsh v. Railroad Co., 13 O. F. D. 234, 176 U. S. 469; Railway Co. v. Gardner, 177 U. S. 332; Williams v. Wingo, 177 U. S. 601; Water Co. v. Freeport, 180 U. S. 587; St. Paul Gas Light Co. v. St. Paul, 181 U. S. 145; Pinney v. Nelson, 183 U. S. 144; Orr v. Gilman, 183 U. S. 278; Detroit v. Railway Co., 184 U. S. 368; Wilson v. Standefer, 184 U. S. 399; Wilson v. Iseminger, 185 U. S. 55; Waterworks Co. v. Louisiana, 185 U. S. 336; Supply Co. v. Mobile, 186 U. S. 212; Glue Co. v. Glue Co., 187 U. S. 611; Sawyer v. Piper, 189 U. S. 154; City v. Light Co., 191 U. S. 150; Defiance Water Co. v. City of Defiance, 14 O. F. D. 127, 191 U. S. 184; Bank v. Parker, 192 U. S. 73; County v. Irrigation Co., 192 U. S. 201; Book Co. v. Kansas, 193 U. S. 49; Railroad v. City, 193 U. S. 416; Water Co. v. Newburyport, 193 U. S. 561; Loan Association v. Braham, 193 U. S. 635; Wright v. Insurance Co., 193 U. S. 657; Shaw v. City, 194 U. S. 593; Water Works Co. v. Helena, 195 U. S. 383; Lee v. Robinson, 196 U. S. 64; Muhlker v. Railroad Co., 197 U. S. 544; New York, ex rel., v. Commissioners, 199 U. S. 1; Marvin v. Trout, 15 O. F. D. 141, 199 U. S. 213, 3 O. L. R. 550; Manigault v. Springs, 199 U. S. 473; Water Co. v. Knoxville, 200 U. S. 22; Serralles v. Esbri, 200 U. S. 103; Mead v. Portland, 200 U. S. 148; Graham v. Folsom, 200 U. S. 248; Gunter v. Railroad Co., 200 U. S. 273; Railroad Co. v. Illinois, ex rel., 201 U. S. 506; Powers v. Railway Co., 201 U. S. 543; Devine v. Los Angeles, 202 U. S. 313; Vicksburg v. Waterworks Co., 202 U. S. 453; National Council v. State Council, 203 U. S. 151; Deposit Co. v. City, 203 U. S. 311; Offield v. Railroad Co., 203 U. S. 372; Railroad Co. v. New Haven, 203 U. S. 379; Smelting Co. v. Colorado, 204 U. S. 103; Railway Co. v. Railway Co., 204 U. S. 116; Railway Co. v. City, 205 U. S. 236; Chanler v. Kelsey, 205 U. S. 466; Smith v. Jennings, 206 U. S. 276; Vicksburg v. Waterworks Co., 206 U. S. 496; Bernheimer v. Converse, 206 U. S. 516; Sauer v. City, 206 U. S. 536; Sullivan v. Texas, 207 U. S. 416; Hunter v. Pittsburgh, 207 U. S. 161; Polk v. Life Association, 207 U. S. 310; Railway v. Duluth, 208 U. S. 583; Jetton v. University, 208 U. S. 489; Water Co. v. McCarter, 209 U. S. 349; St. Louis v. Railways Co., 210 U. S. 266; Railway v. Vicksburg, 209 U. S. 358; Cosmopolitan Club v. Virginia, 208 U. S. 378; Telephone Co. v. Los Angeles, 211 U. S. 265; Berea College v. Kentucky, 211 U. S. 45; Packing Co. v. Arkansas, 212 U. S. 322; Murray v. Distilling Co., 213 U. S. 151; Des Moines v. City Railway Co., 214 U. S. 179; Railway v. Minneapolis, 214 U. S. 497; Henley v. Myers, 215 U. S. 373; Minneapolis v. Street Railway Co., 215 U. S. 417; Louisiana, ex rel., v. New Orleans, 215 U. S. 170; Road Co. v. Hines, 215 U. S. 336; Railway v. Kansas, ex rel., 216 U. S. 262; Wright v. Railroad and Banking Co., 216 U. S. 420; Railway v. Minnesota, 216 U. S. 206, 234; Frellsen v. Crandell, 217 U. S. 71; Bank v. Kentucky, 217 U. S. 443; Lumber Co. v. Mississippi, 217 U. S. 433; Railway v. Railway, 218 U. S. 431; Griffith v. Connecticut, 218 U. S. 563; Fisher v. New Orleans, 218 U. S. 438; Moffitt v. Kelly, 218 U. S. 400; Shawnee Sewerage and Drainage Co. v. Stearns, 220 U. S. 462; J. W. Perry Co. v. Norfolk, 220 U. S. 472; Grand Trunk Western Ry. v. Railroad Commission of Indiana, 221 U. S. 400; Texas and New Orleans R. R. v. Miller, 221 U. S. 408 [affirming 128 S. W. 1165]; Texas and New Orleans R. R. v. Gross, 221 U. S. 417 [affirming 128 S. W. 1173]; Fifth Avenue Coach Co. v. New York, 221 U. S. 467 [affirming 194 N. Y. 19]; State v. Commercial Bank of Cincinnati, 7 O. 125; Armstrong v. Treas. of Athens County, 10 O. 235; Matheny v. Golden, 5 O. S. 361; Goodale v. Fennell, et al., 27 O. S. 426; State, ex rel., v. Eagle Insurance Co., 50 O. S. 252; Thomas v. State, 76 O. S. 341; State, ex rel., v. Creamer, 85 O. S. 349; State v. Norton, 5 O. N. P. 183, 7 O. D. (N.P.) 354; Dayton v. Railway Co., 12 O. D. (N.P.) 258; Cincinnati v. Ferguson, 12 O. D. (N.P.) 488; Caldwell v. Railway Co., 14 O. D. (N.P.) 375; Little v. Altman, 15 O. D. (N.P.) 355; Cincinnati v. Louisville Railway, 9 O. N. P. (N.S.) 433; Coke Co. v. Hamilton, 37 Fed. 832, 6 O. F. D. 265; Shaver v. The Pennsylvania Company, 71 Fed. 931; 9 O. F. D. 221; Insurance Co. v. Cuyahoga Co., 12 O. F. D. 619, 45 C. C. A. 233, 106 Fed. 123; Railway v. Cleveland, 135 Fed. 368, 14 O. F. D. 746.

² No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316; *Passenger Cases*, 48 U. S. (7 How.) 283; *Cooley v. Board of Wardens*, 53 U. S. (12 How.) 299; *Low v. Austin*, 80 U. S. (13 Wall.) 29; *Railroad Co. v. Pennsylvania*, 82 U. S. (15 Wall.) 284; *Cook v. Pennsylvania*, 97 U. S. 566; *People v. Commissioners*, 104 U. S. 466; *Turner v. Maryland*, 107 U. S. 38; *People v. Compagnie*, 107 U. S. 59; *Brown v. Houston*, 114 U. S. 622; *Coal Co. v. Bates*, 156 U. S. 577; *Guano Co. v. North Carolina*, 171 U. S. 345; *Dooley v. United States*, 183 U. S. 151; *Cornell v. Coyne*, 192 U. S. 418; *Wire Co. v. Speed*, 192 U. S. 500; *New Mexico, ex rel., v. Railroad Co.*, 203 U. S. 38; *Burke v. Wells*, 208 U. S. 14; *Selliger v. Kentucky*, 213 U. S. 203.

³ No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Cooley v. Board of Wardens, 53 U. S. (12 How.) 299; *Cox v. Collector*, 79 U. S. (12 Wall.) 204; *Steamship Co. v. Tinker*, 94 U. S. 238; *Packet Co. v. Keokuk*, 95 U. S. 80; *Guy v. Baltimore*, 100 U. S. (10 Otto) 434; *Steamship Co. v. Board of Health*, 118 U. S. 455; *Huse v. Glover*, 119 U. S. 543; *Perry v. Torrence*, 8 O. 522.

ARTICLE II.

SECTION 1. ¹ The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

² Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of votes for each; which List they shall sign and certify, and transmit sealed to the Seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

Minor v. Happersett, 88 U. S. (21 Wall.) 162; *In re Green*, 134 U. S. 377; *McPherson v. Blacker*, 146 U. S. 1.

³ The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

⁴ No Person except a natural born Citizen, or a Citizen of the United States, at the Time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the age of thirty five Years, and been fourteen Years a Resident within the United States.

⁵ In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to Discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law pro-

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vide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

⁶ The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

⁷ Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation.—“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

SECTION 2. ¹ The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

Ex parte Wells, 59 U. S. (18 How.) 307; *Dynes v. Hoover*, 61 U. S. (20 How.) 65; *Ex parte Garland*, 71 U. S. (4 Wall.) 333; *Young v. United States*, 97 U. S. 39; *In re Neagle*, 135 U. S. 1; *Johnson v. Sayre*, 158 U. S. 109.

² He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Marbury v. Madison, 5 U. S. (1 Cranch) 137; *Ex parte Hennen*, 38 U. S. (13 Pet.) 220; *United States, ex rel., v. Guthrie*, 58 U. S. (17 How.) 284; *United States v. Hartwell*, 73 U. S. (6 Wall.) 385; *United States v. Moore*, 95 U. S. (5 Otto) 760; *United States v. Germaine*, 99 U. S. (9 Otto) 508; *Wood v. United States*, 107 U. S. (17 Otto) 414; *United States v. Perkins*, 116 U. S. 483; *United States v. Arjona*, 120 U. S. 479; *Auffmordt v. Hedden*, 137 U. S. 310; *Ekin v. United States*, 142 U. S. 651; *United States v. Allred*, 155 U. S. 591; *United States v. Eaton*, 169 U. S. 331; *Rice v. Ames*, 180 U. S. 371; *De Lima v. Bidwell*, 182 U. S. 1; *Pepke v. United States*, 183 U. S. 176; *Shurtleff v. United States*, 189 U. S. 311; *Keller v. United States*, 213 U. S. 138.

³ The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

United States v. Corson, 114 U. S. 619; *In re Neagle*, 135 U. S. 1; *Ex parte Ward*, 173 U. S. 452.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Marbury v. Madison, 5 U. S. (1 Cranch) 137; *In re Neagle*, 135 U. S. 1; *In re Baiz*, 135 U. S. 403; *Commission v. Railway Co.*, 167 U. S. 479.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Shurtleff v. United States. 189 U. S. 311.

ARTICLE III.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Ex parte Bollman, 8 U. S. (4 Cranch) 75; Martin v. Lessee, 14 U. S. (1 Wheat.) 304; Insurance Co. v. Canter, 26 U. S. (1 Pet.) 511; Livingston v. Story, 34 U. S. (9 Pet.) 632; Benner v. Porter, 50 U. S. (9 How.) 235; In re Kaine, 55 U. S. (14 How.) 103; Lessee v. Improvement Co., 59 U. S. (18 How.) 272; Ex parte Garland, 71 U. S. (4 Wall.) 333; Insurance Co. v. Dunn, 86 U. S. (19 Wall.) 214; United States v. Railroad Co., 98 U. S. 569; Tennessee v. Davis, 100 U. S. (10 Otto) 257; Ames v. Kansas, ex rel., 111 U. S. 449; In re Loney, 134 U. S. 372; McAllister v. United States, 141 U. S. 174; In re Cooper, 143 U. S. 472; Holmes v. Goldsmith, 147 U. S. 150; United States v. Coe, 155 U. S. 76; Robertson v. Baldwin, 165 U. S. 275; Fruit Co. v. Henderson, 170 U. S. 511; Ex parte Henry Ward, 173 U. S. 452; Turner v. Williams, 194 U. S. 279; James v. United States, 202 U. S. 401; Ex parte Wisner, 203 U. S. 449; Kansas v. Colorado, 206 U. S. 46; Holmgren v. United States, 217 U. S. 509; Muskrat v. United States, 219 U. S. 346; United States v. In-Lots, 4 O. F. D. 253; Bell v. Trust Co., 3 O. F. D. 514, 1 Bliss, 260, Fed Cases, 1260; Lee v. Insurance Co., 3 O. F. D. 663, Fed Cases, 8181.

SECTION 2. ¹ The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Chisholm v. Georgia, 2 U. S. (2 Dall.) 419; Mossman v. Higginson, 4 U. S. (4 Dall.) 12; Hodgson v. Bowerbank, 9 U. S. (5 Cranch) 303; Pawlet v. Clark, 13 U. S. (9 Cranch) 292; Martin v. Lessee, 14 U. S. (1 Wheat.) 304; Cohens v. Virginia, 19 U. S. (6 Wheat.) 264; Osborn v. Bank, 22 U. S. (9 Wheat.) 738; Governor of Georgia v. Madrazo, 26 U. S. (1 Pet.) 110; Ross v. Doe, 26 U. S. (1 Pet.) 655; Parsons v. Bedford, 28 U. S. (3 Pet.) 433; Cherokee Nation v. Georgia, 30 U. S. (5 Pet.) 1; Worcester v. Georgia, 31 U. S. (6 Pet.) 515; Cary v. Curtis, 44 U. S. (3 How.) 236; Lane v. Vick, 44 U. S. (3 How.) 464; License Cases, 46 U. S. (5 How.) 504; Navigation Co. v. Bank, 47 U. S. (6 How.) 344; Luther v. Borden, 48 U. S. (7 How.) 1; Missouri v. Iowa, 48 U. S. (7 How.) 660; Sheldon v. Sill, 49 U. S. (8 How.) 441; McNulty v. Batty, 51 U. S. (10 How.) 72; Newton v. Stebbins, 51 U. S. (10 How.) 586; Teal v. Felton, 53 U. S. (12 How.) 284; Pennsylvania v. Bridge Co., 54 U. S. (13 How.) 518; Rundle v. Canal Co., 55 U. S. (14 How.) 80; Railroad Co. v. Derby, 55 U. S. (14 How.) 468; Railroad Co. v. Railroad Co., 56 U. S. (15 How.) 233; Marshall v. Railroad Co., 57 U. S. (16 How.) 314; Fontain v. Ravenel, 58 U. S. (17 How.) 369; Smith v. Maryland, 59 U. S. (18 How.) 71; Lessee v. Improvement Co., 59 U. S. (18 How.) 272; Dodge v. Woolsey, 59 U. S. (18 How.) 331; Scott v. Sanford, 60 U. S. (19 How.) 393; Irvine v. Marshall, 61 U. S. (20 How.) 558; Fenn v. Holme, 62 U. S. (21 How.) 481; The Moses Taylor, 71 U. S. (4 Wall.) 411; Georgia v. Stanton, 73 U. S. (6 Wall.) 50; Barney v. Baltimore, 73 U. S. (6 Wall.) 280; Blyew v. United States, 80 U. S. (13 Wall.) 581; Christmas v. Russell, 81 U. S. (14 Wall.) 69; Holden v. Joy, 84 U. S. (17 Wall.) 211; Atkins v. Disintegrating Co., 85 U. S. (18 Wall.) 272; Insurance Co. v. Dunn, 86 U. S. (19 Wall.) 214; Coit v. Robinson, 86 U. S. (19 Wall.) 274; Insurance Co. v. Morse, 87 U. S. (20 Wall.) 445; Murdock v. Memphis, 87 U. S. (20 Wall.) 590; Ober v. Gallagher, 93 U. S. (3 Otto) 199; Hotel Co. v. Wade, 97 U. S. (7 Otto) 13; United States v. Railroad Co., 98 U. S. (8 Otto) 569; Tennessee v. Davis, 100 U. S. (10 Otto) 257; The "City of Panama," 101 U. S. (11 Otto) 453; Ex parte Gordon, 104 U. S. (14 Otto) 515; Ex parte Boyd, 105 U. S. (15 Otto) 647; New Hampshire v. Louisiana, 108 U. S. 76; Ames v. Kansas, ex rel., 111 U. S. 449; Rosenbaum v. Bauer, 120 U. S. 450; Wisconsin v. Insurance Co., 127 U. S.

Art.III, § 3. CONSTITUTION OF THE UNITED STATES.

265; *Smith v. Adams*, 130 U. S. 167; *In re Baiz*, 135 U. S. 403; *Manchester v. Massachusetts*, 139 U. S. 240; *In re Fassett*, 142 U. S. 479; *Commission v. Brimson*, 154 U. S. 447; *California v. Pacific Co.*, 157 U. S. 229; *Pollock v. Trust Co.*, 157 U. S. 429; *The Glide*, 167 U. S. 606; *Mining Co. v. United States*, 175 U. S. 423; *Louisiana v. Texas*, 176 U. S. 1; *Mining Co. v. Rutter*, 177 U. S. 505; *Knapp v. McCaffrey*, 177 U. S. 638; *Smith v. Reeves*, 178 U. S. 436; *Wiley v. Sinkler*, 179 U. S. 58; *Workman v. City*, 179 U. S. 552; *Downes v. Bidwell*, 182 U. S. 244; *Minnesota v. Securities Co.*, 184 U. S. 199; *Minnesota v. Hitchcock*, 185 U. S. 373; *Elliott v. Toeppner*, 187 U. S. 327; *Whaling Co. v. United States*, 187 U. S. 447; *Ayres v. Polsdorfer*, 187 U. S. 585; *Hennessy v. Drug Co.*, 189 U. S. 25; *Colombia v. Cauca Co.*, 190 U. S. 524; *South Dakota v. North Carolina*, 192 U. S. 286; *Stevenson v. Fain*, 195 U. S. 165; *Coal Co. v. Baker*, 196 U. S. 432; *Sauer v. New York*, 206 U. S. 536; *Railway v. Taylor*, 210 U. S. 281; *B. & O. R. R. Co. v. Cary*, 28 O. S. 208; *Ex parte Pritchard*, 6 O. F. D. 604; *Ohio Dairy Co. v. Railway*, 7 O. N. P. (N.S.) 451, 19 O. D. (N.P.) 97; *Butler v. Young*, 4 O. F. D. 238, 1 Flip, 276, Fed. Cases, 2245; *The Steamboat General Buell v. Long*, 18 O. S. 521; *Railway Co. v. Fulton, Admr.*, 59 O. S. 575; *Dundas v. Bowler*, 2 O. F. D. 250, 3 McLean, 204, Fed. Cases, 4140; *New York Life Insurance Co. v. Best*, 23 O. S. 105.

² In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Ex parte Bollman v. Ex parte Swartwout, 8 U. S. (4 Cranch) 75; *Matthews v. Zane*, 8 U. S. (4 Cranch) 382; *Martin v. Lessee*, 14 U. S. (1 Wheat.) 304; *Cohens v. Virginia*, 19 U. S. (6 Wheat.) 264; *Osborn v. Bank*, 22 U. S. (9 Wheat.) 738; *The United States v. Ortega*, 24 U. S. (11 Wheat.) 467; *Governor v. Madrazo*, 26 U. S. (1 Pet.) 110; *Ex parte Crane*, 30 U. S. (5 Pet.) 190; *Harrison v. Nixon*, 34 U. S. (9 Pet.) 483; *United States v. Chicago*, 48 U. S. (7 How.) 185; *Pennsylvania v. Bridge Co.*, 54 U. S. (13 How.) 518; *Florida v. Georgia*, 58 U. S. (17 How.) 478; *Steamer Oregon v. Rocca*, 59 U. S. (18 How.) 570; *Ex parte Vallandigham*, 68 U. S. (1 Wall.) 243; *Freeborn v. Smith*, 69 U. S. (2 Wall.) 160; *United States v. Circuit Judges*, 70 U. S. (3 Wall.) 673; *Ex parte Bradley*, 74 U. S. (7 Wall.) 364; *Pennsylvania v. Quicksilver Co.*, 77 U. S. (10 Wall.) 553; *Morgan v. Thornhill*, 78 U. S. (11 Wall.) 65; *United States v. Railroad Co.*, 98 U. S. (8 Otto) 569; *United States v. Texas*, 143 U. S. 621; *In re Honhorst*, 150 U. S. 653; *Missouri v. Sanitary District*, 180 U. S. 208; *Oregon v. Hitchcock*, 202 U. S. 60; *United States v. Bitty*, 208 U. S. 393; *Railway v. Taylor*, 210 U. S. 281; *Muskrat v. United States*, 219 U. S. 346; *In re Jones Law*, 11 O. C. C. (N.S.) 33, 20 O. C. D. 697; *In re Strauss*, 11 O. F. D. 168; *Fox v. State of Ohio*, 2 O. F. D. 499.

³ The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Evans v. Bollen, 4 U. S. (4 Dall.) 342; *United States v. Dawson*, 56 U. S. (15 How.) 467; *United States v. Jackalow*, 66 U. S. (1 Black) 484; *Eilenbecker v. District Court*, 134 U. S. 31; *In re Palliser*, 136 U. S. 257; *Cook v. United States*, 138 U. S. 157; *Ball v. United States*, 140 U. S. 118; *Horner v. United States*, 143 U. S. 207; *In re Debs*, 158 U. S. 564; *Barrett v. United States (No. 1)*, 169 U. S. 218; *Thompson v. Utah*, 170 U. S. 343; *Traction Co. v. Hof*, 174 U. S. 1; *Schick v. United States*, 195 U. S. 65; *Dorr v. United States*, 195 U. S. 138; *Trono v. United States*, 199 U. S. 521; *Tinsley v. Treat*, 205 U. S. 20; *Packing Co. v. United States*, 209 U. S. 56; *Haas v. Henkel*, 216 U. S. 462; *Dille v. State*, 34 O. S. 617; *Marvin v. Trout*, 15 O. F. D. 141, 3 O. L. R. 550.

SECTION 3. ¹ Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Young v. United States, 97 U. S. (7 Otto) 39.

² The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Ex parte Garland, 71 U. S. (4 Wall.) 333; *Wallach v. Van Riswick*, 92 U. S. 202; *Jenkins v. Collard*, 145 U. S. 546, 7 O. F. D. 683.

ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Mills v. Duryee, 11 U. S. (7 Cranch) 481; *Buckner v. Finley*, 27 U. S. (2 Pet.) 586; *M'Elmoyle v. Cohen*, 38 U. S. (13 Pet.) 312; *Mitchell v. Lenox*, 39 U. S. (14 Pet.) 49; *Bank v. Dalton*, 50 U. S. (9 How.) 522; *Booth v. Clark*, 58 U. S. (17 How.) 322; *Hoyt v. Sheldon*, 66 U. S. (1 Black) 518; *Christmas v. Russell*, 72 U. S. (5 Wall.) 290; *Green v. Van Buskirk*, 72 U. S. (5 Wall.) 307; *Cheever v. Wilson*, 76 U. S. (9 Wall.) 108; *Crapo v. Kelley*, 83 U. S. (16 Wall.) 610; *Dupasseur v. Rochereau*, 88 U. S. (21 Wall.) 130; *Turnbull v. Payson*, 95 U. S. (5 Otto) 418; *Bonaparte v. Tax Court*, 104 U. S. (14 Otto) 592; *Embry v. Palmer*, 107 U. S. (17 Otto) 3; *Wisconsin v. Insurance Co.*, 127 U. S. 265; *Cole v. Cunningham*, 133 U. S. 107; *Machine Co. v. Radcliffe*, 137 U. S. 287; *Huntington v. Attrill*, 146 U. S. 657; *Lloyd v. Matthews*, 155 U. S. 222; *Goldey v. Morning News*, 156 U. S. 518; *Hilton v. Guyot*, 159 U. S. 113; *Laing v. Rigney*, 160 U. S. 531; *Telegraph Co. v. Purdy*, 162 U. S. 329; *Bank v. Farnum*, 176 U. S. 640; *Clarke v. Clarke*, 178 U. S. 186; *Railroad Co. v. Tourville*, 179 U. S. 322; *Atherton v. Atherton*, 181 U. S. 155; *Jacobs v. Marks*, 182 U. S. 583; *Loan Association v. Ebaugh*, 185 U. S. 114; *Andrews v. Andrews*, 188 U. S. 14; *Life Ins. Co. v. McGrew*, 188 U. S. 291; *Publishing Co. v. Beckwith*, 188 U. S. 567; *Loan Association v. Williamson*, 189 U. S. 122; *American Provision Co. v. Davis Provision Co.*, 191 U. S. 373; *Railroad Co. v. Flannigan*, 192 U. S. 29; *Loan Association v. Braham*, 193 U. S. 635; *Bank v. Wiley*, 195 U. S. 257; *Allen v. Alleghany Co.*, 196 U. S. 458; *Jaster v. Currie*, 198 U. S. 144; *Haddock v. Haddock*, 201 U. S. 562; *New York, ex rel., v. Miller*, 202 U. S. 584; *Assurance Co. v. Building Association*, 203 U. S. 106; *Life Association v. McDonough*, 204 U. S. 8; *Tilt v. Kelsey*, 207 U. S. 43; *Brown v. Fletcher's Estate*, 210 U. S. 82; *Fauntleroy v. Lum*, 210 U. S. 230; *Express Co. v. Mullins*, 212 U. S. 311; *Bagley v. Fire Extinguisher Co.*, 212 U. S. 477; *Railway v. Sowers*, 213 U. S. 55; *Smithsonian Institution v. St. John*, 214 U. S. 19; *Everett v. Everett*, 215 U. S. 203; *Fall v. Eastin*, 215 U. S. 1; *Olmsted v. Olmsted*, 216 U. S. 386; *Railway v. Melton*, 218 U. S. 36; *Sistare v. Sistare*, 218 U. S. 1; *Hunter v. Insurance Co.*, 218 U. S. 573; *West Side R. R. v. Pittsburgh Construction Co.*, 219 U. S. 92; *Gavieres v. United States*, 220 U. S. 338; *Texas and New Orleans R. R. v. Miller*, 221 U. S. 408 [affirming 128 S. W. 1165]; *Texas and New Orleans R. R. v. Gross*, 221 U. S. 417 [affirming 128 S. W. 1173]; *McMurtry v. Campbell*, 1 O. 259; *Pennywit, et al., v. Foote, et al.*, 27 O. S. 600; *Sipes v. Whitney*, 30 O. S. 69; *Kingsborough v. Tousley*, 56 O. S. 450; *In the Matter of the Estate of Crawford*, 68 O. S. 58; *In re Estate of Crawford*, 21 O. C. C. 554, 11 O. C. D. 605 [affirmed, *Crawford*, *In re*, 68 O. S. 58]; *Hafner v. Bank of Enterprise*, 3 O. C. C. (N.S.) 626, 14 O. C. D. 652; *State v. Ottman*, 4 O. N. P. 195, 6 O. D. (N.P.) 265; *Keenan v. Keenan*, 5 O. N. P. (N.S.) 12; *Waterhouse v. Waterhouse*, 6 O. N. P. 106, 8 O. D. (N.P.) 73; *Mettler v. Warner*, 21 O. D. (N.P.) 184.

SECTION 2. ¹ The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Bank v. Earle, 38 U. S. (13 Pet.) 519; *Groves v. Slaughter*, 40 U. S. (15 Pet.) 449; *Passenger Cases*, 48 U. S. (7 How.) 283; *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Conner v. Elliott*, 59 U. S. (18 How.) 591; *Scott v. Sanford*, 60 U. S. (19 How.) 393; *Insurance Co. v. Massachusetts*, 77 U. S. (10 Wall.) 566; *Ward v. Maryland*, 79 U. S. (12 Wall.) 418; *Slaughter House Cases*, 83 U. S. (16 Wall.) 36; *Bradwell v. State*, 83 U. S. (16 Wall.) 130; *Railroad v. Railroad*, 87 U. S. (20 Wall.) 137; *Minor v. Happersett*, 88 U. S. (21 Wall.) 162; *Bank v. Lowery*, 93 U. S. (3 Otto) 72; *McCready v. Virginia*, 94 U. S. (4 Otto) 391; *Ex parte Virginia*, 100 U. S. (10 Otto) 339; *Railroad Co. v. Koontz*, 104 U. S. (14 Otto) 5; *United States v. Harris*, 106 U. S. (16 Otto) 629; *Brown v. Houston*, 114 U. S. 622; *Mining Co. v. Pennsylvania*, 125 U. S. 181; *Cole v. Cunningham*, 133 U. S. 107; *Leisy v. Hardin* (dissenting opinion), 135 U. S. 100; *Reynolds v. Alden*, 136 U. S. 348; *Railroad Co. v. Pennsylvania*, 136 U. S. 114; *Minnesota v. Barber*, 136 U. S. 313; *Boyd v. Nebraska, ex rel.*, 143 U. S. 135; *The Haytian Republic*, 154 U. S. 118; *Coal Co. v. Bates*, 156 U. S. 577; *Noble v. Mitchell*, 164 U. S. 367; *Adams Express Co. v. Ohio State Auditor*, 10 O. F. D. 655, 165 U. S. 194; *Railway Co. v. Haber*, 169 U. S. 613; *Blake v. McClung*, 172 U. S. 239, 176 U. S. 59; *Maxwell v. Dow*, 176 U. S. 581; *Oil Co. v. Texas*, 177 U. S. 28; *Sully v. Bank*, 178 U. S. 289; *Gallup v. Schmidt*, 183 U. S. 300; *Insurance Co. v. Connecticut*, 185 U. S. 364; *Chadwick v. Kelley*, 187 U. S. 540; *Manley v. Park*, 187 U. S. 547; *Power Co. v. Railroad Co.*, 187 U. S. 569; *Glue Co. v. Glue Co.*, 187 U. S. 611; *Lottery Case*, 188 U. S. 321; *Provision Co. v. Provision Co.*, 191 U. S. 373; *Chambers v. B. & O. Ry.*, 16 O. F. D. 123, 6 O. L. R. 498, 207 U. S. 142; *Water Co. v. McCarter*, 209 U. S. 349; *Berea College v. Kentucky*, 211 U. S. 45; *Railway Passenger Assurance Co. of Hartford, Conn., v. Pierce*, 27 O. S. 155; *State v. Ottman*, 4 O. N. P. 195, 6 O. D. (N.P.) 265; *Jacoby Bros. v. Dotson*, 5 O. N. P. 282, 7 O. D. (N.P.) 412; *Davies v. State, ex rel.*, 6 O. C. C. (N.S.) 417, 17 O. C. D. 593 [reversed, *Lucas Co. (Auditor) v. State*, 75 O. S. 114, 78 N. E. Rep. 955]; *Uhrlaub v. Cincinnati, et al.*, 8 O. C. C. (N.S.) 505, 18 O. C. D. 797 [affirmed, no report, 72 O. S. 667]; *Western Union Telegraph Co. v. Mayer*, 28 O. S. 521; *Railroad v. Chambers*, 73 O. S. 16; *Bank v. Shields*, 8 O. F. D. 111, 59 Fed. 952.

Art.IV, § 3. CONSTITUTION OF THE UNITED STATES.

² A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

Cohens v. Virginia, 19 U. S. (6 Wheat.) 264; *Holmes v. Jennison*, 39 U. S. (14 Pet.) 540; *Prigg v. Pennsylvania*, 41 U. S. (16 Pet.) 539; *Jones v. Van Zandt*, 46 U. S. (5 How.) 215; *Taylor v. Taintor*, 83 U. S. (16 Wall.) 366; *Robb v. Connolly*, 111 U. S. 624; *Ex parte Reggel*, 114 U. S. 642; *Roberts v. Reilly*, 116 U. S. 80; *Cook v. Hart*, 146 U. S. 183; *Lascelles v. Georgia*, 148 U. S. 537; *Streep v. United States*, 160 U. S. 128; *Hyatt v. People*, ex rel., 188 U. S. 691; *Munsey v. Clough*, 196 U. S. 364; *In re Strauss*, 197 U. S. 324; *Pettibone v. Nichols*, 203 U. S. 192; *Appleyard v. Massachusetts*, 203 U. S. 222; *McNichols v. Pease*, 207 U. S. 100; *Bassing v. Cady*, 208 U. S. 386; *Pierce v. Creecy*, 210 U. S. 387; *Marbles v. Creecy*, 215 U. S. 63; *Work v. Corrington*, 34 O. S. 64; *Ex parte Sheldon*, 34 O. S. 319; *Ex parte Ammons*, 34 O. S. 518; *Wilcox v. Nolze*, 34 O. S. 520; *France v. State*, 57 O. S. 1; *Thomas v. Evans*, 73 O. S. 140; *In re Geo. Fairman*, 3 O. N. P. (N.S.) 485; *Schell v. Youngstown Iron, etc., Co.*, 4 O. C. C. (N.S.) 172, 16 O. C. D. 209; *In the Matter of Hampton, Fugitive*, 1 O. N. P. 181, 2 O. D. (N.P.) 579; *State of Ohio v. Hudson*, 2 O. N. P. 1, 2 O. D. (N.P.) 41; *Thomas v. Evans*, 14 O. D. (N.P.) 336; *In re Geo. D. Polly*, 3 O. N. P. (N.S.) 265, 16 O. D. (N.P.) 427; *Extradition of Mutchler*, 8 O. N. P. (N.S.) 345, 19 O. D. (N.P.) 587.

³ No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the party to whom such Service or Labour may be due.

Groves v. Slaughter, 40 U. S. (15 Pet.) 449; *Prigg v. Pennsylvania*, 41 U. S. (16 Pet.) 539; *United States v. Reese*, 92 U. S. (2 Otto) 214; *Civil Rights Cases*, 109 U. S. 3.

SECTION 3. ¹ New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Pollard v. Hagan, 44 U. S. (3 How.) 212; *Permoli v. First Municipality*, 44 U. S. (3 How.) 589; *Scott v. Jones*, 46 U. S. (5 How.) 343; *Strader v. Graham*, 51 U. S. (10 How.) 82; *Withers v. Buckley*, 61 U. S. (20 How.) 84; *Escanaba Co. v. Chicago*, 107 U. S. 678; *Van Brocklin v. Tennessee*, 117 U. S. 151; *Huse v. Glover*, 119 U. S. 543; *Sands v. River Co.*, 123 U. S. 288; *Boyd v. Nebraska*, ex rel., 143 U. S. 135; *Ward v. Race Horse*, 163 U. S. 504; *Bollin v. Nebraska*, 176 U. S. 83; *Iowa v. Rood*, 187 U. S. 87; *Wedding v. Meyler*, 192 U. S. 573; *Louisiana v. Mississippi*, 202 U. S. 1; *Coyle v. Oklahoma*, 221 U. S. 559 [affirming *Coyle v. Oklahoma*, 113 Pac. 944.].

² The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316; *Cherokee Nation v. Georgia*, 30 U. S. (5 Pet.) 1; *United States v. Gratiot*, 39 U. S. (14 Pet.) 526; *Dred Scott v. Sanford*, 60 U. S. (19 How.) 393; *Snow v. United States*, 85 U. S. (18 Wall.) 317; *United States v. Waddell*, 112 U. S. 76; *Maxwell Land-Grant Case*, 121 U. S. 325; *United States v. Telephone Co.*, 128 U. S. 315; *Romney v. United States*, 136 U. S. 1; *Mining Co. v. Rutter*, 177 U. S. 505; *De Lima v. Bidwell*, 182 U. S. 1; *Downes v. Bidwell*, 182 U. S. 244; *Kean v. Canal Co.*, 190 U. S. 452; *Dorr v. United States*, 195 U. S. 138; *Water Co. v. Baker*, 196 U. S. 119; *Rassmussen v. United States*, 197 U. S. 516; *Kansas v. Colorado*, 206 U. S. 46, 206 U. S. 89; *Light v. United States*, 220 U. S. 523; *Andrew v. Auditor*, 5 O. N. P. 123, 5 O. D. (N.P.) 242; *Myers, et al., v. Manhattan Bank*, 20 O. 283.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature can not be convened) against domestic Violence.

Luther v. Borden, 48 U. S. (7 How.) 1; *Texas v. White*, 74 U. S. (7 Wall.) 700; *Minor v. Happersett*, 88 U. S. (21 Wall.) 162; *United States v. Cruikshank*, 92 U. S. (2 Otto) 542; *Boyd v. Nebraska*, ex rel., 143 U. S. 135; *Forsyth v. Hammond*, 166 U. S. 506; *Downes v. Bidwell*, 182 U. S. 244; *Kies v. Lowrey*, 199 U. S. 233; *South Carolina v. United States*, 199 U. S. 437; *Elder v. Colorado*, ex rel., 204 U. S. 85; *Coyle v. Oklahoma*, 221 U. S. 559.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner effect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Knox v. Lee, 79 U. S. (12 Wall.) 457.

ARTICLE VI.

¹ All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Lessee v. Kibbe, 39 U. S. (14 Pet.) 353; *Dodge v. Woolsey*, 59 U. S. (18 How.) 331, 3 O. F. D. 300; *Scott v. Sanford*, 60 U. S. (19 How.) 393.

² This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Ware v. Hylton, 1 U. S. (3 Dall. 199) 99; *Cohens v. Virginia*, 5 U. S. (6 Wheat. 264) 90; *Nation v. Georgia*, 30 U. S. (5 Pet.) 1; *Fox v. State*, 46 U. S. (5 How.) 410; *Fletcher v. State*, 46 U. S. (5 How.) 504; *Smith v. Turner*, 48 U. S. (7 How.) 283; *Mayor v. Cooper*, 73 U. S. (6 Wall.) 247; *Society v. Coite*, 73 U. S. (6 Wall.) 594; *The Cherokee Tobacco*, 78 U. S. (11 Wall.) 616; *Knox v. Lee*, 79 U. S. (12 Wall.) 457; *Bank v. Dearing*, 91 U. S. (1 Otto) 29; *Walker v. Sauvinet*, 92 U. S. (2 Otto) 90; *Telegraph Co. v. Telegraph Co.*, 96 U. S. (6 Otto) 1; *Hauenstein v. Lynham*, 100 U. S. (10 Otto) 483; *In re Neagle*, 135 U. S. 1; *Railway v. Hefley*, 158 U. S. 98; *Brown v. Walker*, 161 U. S. 591; *Mining Co. v. Rutter*, 177 U. S. 505; *De Lima v. Bidwell*, 182 U. S. 1; *Downes v. Bidwell*, 182 U. S. 244; *Storti v. Massachusetts*, 183 U. S. 138; *South Carolina v. United States*, 199 U. S. 437; *Armstrong v. Treas. of Athens County*, 10 O. 235; *United States v. In-Lot*, 4 O. F. D. 253, Fed. Cases, 15441; *State v. Vanderpool*, 39 O. S. 273; *Naylor v. P., C., C. & St. L. Ry. Co.*, 4 O. C. C. (N.S.) 437, 16 O. C. D. 277 [affirmed, P., C., C. & St. L. Ry. v. Naylor, 73 O. S. 115, 76 N. E. Rep. 505, 3 L. R. A. 473]; *Estate of Arduino*, 9 O. N. P. (N.S.) 369, 20 O. D. (N.P.) 461.

³ The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

United States v. Insurance Co., 89 U. S. (22 Wall.) 99.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.
DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven, and of the Independence of the United States of

Art.I.

CONSTITUTION OF THE UNITED STATES.

America the Twelfth. **In Witness** whereof We have hereunto subscribed our Names,

	G ^o : WASHINGTON— <i>Presidt. and Deputy from Virginia New Hampshire.</i>
JOHN LANGDON	NICHOLAS GILMAN
	<i>Massachusetts.</i>
NATHANIEL GORHAM	RUFUS KING
	<i>Connecticut.</i>
WM. SAML. JOHNSON	ROGER SHERMAN
	<i>New York.</i>
ALEXANDER HAMILTON	
	<i>New Jersey.</i>
WIL: LIVINGSTON	WM. PATERSON
DAVID BREARLEY	JONA: DAYTON
	<i>Pennsylvania.</i>
B. FRANKLIN	THOS. FITZSIMONS
THOMAS MIFFLIN	JARED INGERSOLL
ROBT. MORRIS	JAMES WILSON
GEO. CLYMER	GOUV MORRIS
	<i>Delaware.</i>
GEO: READ	RICHARD BASSETT
GUNNING BEDFORD Jun	JACO: BROOM
JOHN DICKINSON	
	<i>Maryland.</i>
JAMES MCHENRY	DANL. CARROLL
DAN OF ST THOS JENIFER	
	<i>Virginia.</i>
JOHN BLAIR—	JAMES MADISON Jr
	<i>North Carolina.</i>
WM. BLOUNT	HU WILLIAMSON
RICHD. DOBBS SPAIGHT	
	<i>South Carolina.</i>
J. RUTLEDGE	CHARLES PINCKNEY
CHARLES COTESWORTH PINCKNEY	PIERCE BUTLER
	<i>Georgia.</i>
WILLIAM FEW	ABR BALDWIN
Attest	WILLIAM JACKSON Secretary

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]

Congress shall make no law respecting ¹ an establishment of religion, or prohibiting the free exercise thereof; or ² abridging the freedom of speech, or of the press; or ³ the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

¹ Church v. United States, 143 U. S. 457; Bradfield v. Roberts, 175 U. S. 291; Maxwell v. Dow, 176 U. S. 581; Downes v. Bidwell, 182 U. S. 244; Quick Bear v. Leupp, 210 U. S. 50;

Twining v. New Jersey, 211 U. S. 78; Gompers v. Bucks Stove and Range Co., 221 U. S. 418.

² Horner v. United States, 143 U. S. 207; Robertson v. Baldwin, 165 U. S. 275; Downes v. Bidwell, 182 U. S. 244; United States, ex rel., v. Williams, 194 U. S. 279.

³ United States v. Cruikshank, 92 U. S. 542.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Presser v. Illinois, 116 U. S. 252; Logan v. United States, 144 U. S. 263; Miller v. Texas, 153 U. S. 535; Robertson v. Baldwin, 165 U. S. 275; Twining v. New Jersey, 211 U. S. 78.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Maxwell v. Dow, 176 U. S. 581; Twining v. New Jersey, 211 U. S. 78.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Luther v. Borden, 48 U. S. (7 How.) 1; Lessee v. Improvement Co., 59 U. S. (18 How.) 272; Boyd v. United States, 116 U. S. 616; Spies v. Illinois, 123 U. S. 131; Counselman v. Hitchcock, 142 U. S. 547; West v. Cabell, 153 U. S. 78; Miller v. Texas, 153 U. S. 535; United States v. Zucker, 161 U. S. 475; Brown v. Walker (dissenting opinion), 161 U. S. 591; Stone v. United States, 167 U. S. 178; Bram v. United States, 168 U. S. 532; Maxwell v. Dow, 176 U. S. 581; Fairbank v. United States, 181 U. S. 283; School v. McAnnulty, 187 U. S. 94; Adams v. New York, 192 U. S. 585; Commission v. Baird, 194 U. S. 25; Morris v. Hitchcock, 194 U. S. 384; Hale v. Henkel, 201 U. S. 43; Nelson v. United States, 201 U. S. 92; Rendering Co. v. Vermont, 207 U. S. 541; Tobacco Co. v. Werckmeister, 207 U. S. 284; Twining v. New Jersey, 211 U. S. 78; Packing Co. v. Arkansas, 212 U. S. 322; Rhodus v. Manning, 217 U. S. 597; Baltimore and Ohio R. R. v. Interstate Commerce Commission, 221 U. S. 612; Flint v. Stone, Tracy Co., 220 U. S. 107; Eichenlaub v. State, 36 O. S. 140; Cleveland Electric Co. v. Hitchens, 3 O. N. P. (N.S.) 57; Kaiser v. Walsh, 4 O. N. P. (N.S.) 507, 17 O. D. (N.P.) 324; Inquiry from Grand Jury, In re, 8 O. L. R. 188; United States v. Carter, 5 O. F. D. 592, 14 Bull. 191.

[ARTICLE V.]

No person shall be held ¹ to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor ² shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor ³ be deprived of life, liberty, or property, without due process of law; nor ⁴ shall private property be taken for public use, without just compensation.

¹ Houston v. Moore, 18 U. S. (5 Wheat.) 1; United States v. Reid, 53 U. S. (12 How.) 361; Dynes v. Hoover, 61 U. S. (20 How.) 65; Twitchell v. Commonwealth, 74 U. S. (7 Wall.) 321; Ex parte Reed, 100 U. S. 13; Ex parte Mason, 105 U. S. 696; Ex parte Wilson, 114 U. S. 417; Boyd v. United States, 116 U. S. 616; Parkinson v. United States, 121 U. S. 281; Eilenbecker v. Plymouth County, 134 U. S. 31; In re Claasen, 140 U. S. 200; Counselman v. Hitchcock, 142 U. S. 547; O'Neill v. Vermont, 144 U. S. 323; United States v. Patterson, 150 U. S. 65; Johnson v. Sayre, 158 U. S. 109; Brown v. Walker, 161 U. S. 591; Wong Wing v. United States, 163 U. S. 228; Talton v. Mayes, 163 U. S. 376; United States v. Ball, 163 U. S. 662; District v. Bradley, 164 U. S. 112; Turnpike Co. v. Sandford, 164 U. S. 578; Robertson v. Baldwin, 165 U. S. 275; Gibson v. United States, 166 U. S. 269; In re Chapman, 166 U. S. 661; Stone v. United States, 167 U. S. 178;

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Bram v. United States, 168 U. S. 532; Thompson v. Utah, 170 U. S. 343; Markuson v. Boucher, 175 U. S. 184; Bolln v. Nebraska, 176 U. S. 83; Maxwell v. Dow, 176 U. S. 581; Hawaii v. Mankichi, 190 U. S. 197; Adams v. New York, 192 U. S. 585; Commission v. Baird, 194 U. S. 25; Beavers v. Henkel, 194 U. S. 73; United States, ex rel., v. Williams, 194 U. S. 279; Rassmussen v. United States, 197 U. S. 516; Jack v. Kansas, 199 U. S. 372; Trono v. United States, 199 U. S. 521; Hale v. Henkel, 201 U. S. 43; McAlister v. Henkel, 201 U. S. 90; Nelson v. United States, 201 U. S. 92; In re Moran, 203 U. S. 96; Barrington v. Missouri, 205 U. S. 483; Rendering Co. v. Vermont, 207 U. S. 541; Twining v. New Jersey, 211 U. S. 78; Rhodus v. Manning, 217 U. S. 597; Holt v. United States, 218 U. S. 245; Briscoe v. District of Columbia, 221 U. S. 547 [affirming 32 App. D. C. 167]; Matter of Harris, 221 U. S. 274 [distinguishing Counselman v. Hitchcock, 142 U. S. 547]; Wilson v. United States, 221 U. S. 361; Gompers v. Bucks Stove and Range Co., 221 U. S. 418; American Lithographic Co. v. Werckmeister, 221 U. S. 603; Baltimore and Ohio R. R. v. Interstate Commerce Commission, 221 U. S. 612; Prescott v. State, 19 O. S. 184; Coles v. State of Ohio, 3 O. C. C. (N.S.) 420; 13 O. C. D. 313; Wade v. State, 15 O. C. D. 279; Steuer v. McConnell, 8 O. N. P. 205, 10 O. D. (N.P.) 573; State v. Strong, 12 O. D. (N.P.) 698; Inquiry from Grand Jury, In re, 8 O. L. R. 188; Dille v. State, 34 O. S. 617; Kaiser v. Walsh, 4 O. N. P. (N.S.) 507, 17 O. D. (N.P.) 324; August v. Finnerty, 10 O. C. C. (N.S.) 433, 20 O. C. D. 330; United States v. Hung Chang, 14 O. F. D. 257, 126 Fed. 400.

²Fox v. Ohio, 46 U. S. (5 How.) 410; Ex parte Lange, 85 U. S. (18 Wall.) 163; Ex parte Bigelow, 113 U. S. 328; Bohanan v. Nebraska, 118 U. S. 231, 125 U. S. 692; Simmons v. United States, 142 U. S. 148; Thompson v. United States, 155 U. S. 271; Carter v. McClaughry, 183 U. S. 365; Kepner v. United States, 195 U. S. 100; Trono v. United States, 199 U. S. 521; Burton v. United States, 202 U. S. 344; Serra v. Mortiga, 204 U. S. 470; Grafton v. United States, 206 U. S. 333; Taylor v. United States, 207 U. S. 120; Shoener v. Pennsylvania, 207 U. S. 188; Flemister v. United States, 207 U. S. 372; Bassing v. Cady, 208 U. S. 386; Keerl v. Montana, 213 U. S. 135; Brantley v. Georgia, 217 U. S. 284; Shevlin Co. v. Minnesota, 218 U. S. 57; State v. Cox, 11 O. N. P. (N.S.) 305.

³Holmes v. Jennison, 39 U. S. (14 Pet.) 540; Groves v. Slaughter, 40 U. S. (15 Pet.) 449; Luther v. Borden, 48 U. S. (7 How.) 1; Den v. Land Company, 59 U. S. (18 How.) 272; Scott v. Sanford, 60 U. S. (19 How.) 393; Roosevelt v. Meyer, 68 U. S. (1 Wall.) 512; Legal Tender Cases, 79 U. S. (12 Wall.) 457; Slaughter House Cases, 83 U. S. (16 Wall.) 36; Davidson v. New Orleans, 96 U. S. 97; Barrett v. Holmes, 102 U. S. 651; Kelly v. Pittsburgh, 104 U. S. 78; United States v. Lee, 106 U. S. 196; Ex parte Wall, 107 U. S. 265; Ex parte Bigelow, 113 U. S. 328; Spies v. Illinois, 123 U. S. 131; In re Sawyer, 124 U. S. 200; Callan v. Wilson, 127 U. S. 540; Railway v. Alabama, 128 U. S. 96; Manning v. French, 133 U. S. 186; Ludeling v. Chaffe, 143 U. S. 301; Hallinger v. Davis, 146 U. S. 314; Fong v. United States, 149 U. S. 698; Sparf v. United States, 156 U. S. 51; United States v. Traffic Association, 171 U. S. 505; Meyer v. Richmond, 172 U. S. 82; Insurance Co. v. Spratley, 172 U. S. 602; Paper Co. v. Watson, 173 U. S. 443; Maxwell v. Dow, 176 U. S. 581; Chapin v. Fye, 179 U. S. 127; Fairbank v. United States, 181 U. S. 283; French v. Paving Co., 181 U. S. 324; Wight v. Davidson, 181 U. S. 371; Tonawanda v. Lyon, 181 U. S. 389; Cass Co. v. Detroit, 181 U. S. 396; Detroit v. Parker, 181 U. S. 399; Downes v. Bidwell, 182 U. S. 244; Dairy Co. v. Ohio, 183 U. S. 238; Carter v. McClaughry, 183 U. S. 365; Life Ass'n v. Mettler, 185 U. S. 308; McFaddin v. Buel Co., 185 U. S. 505; Bank v. Moyses, 186 U. S. 181; School v. McAnnulty, 187 U. S. 94; Cummings v. Chicago, 188 U. S. 410; Hibben v. Smith, 191 U. S. 310; Bedford v. United States, 192 U. S. 217; Railway Co v. Minnesota, 193 U. S. 53; Commission v. Baird, 194 U. S. 25; State, ex rel., v. Dollison, 194 U. S. 445, 14 O. F. D. 380; McCray v. United States, 195 U. S. 27, 14 O. F. D. 385; Fayerweather v. Ritch, 195 U. S. 276; Telegraph Co. v. Railway, 195 U. S. 540; Supply Co. v. Power Co., 197 U. S. 299; United States v. Ju Toy, 198 U. S. 253; Oil Co. v. Arnandet, 199 U. S. 182; South Carolina v. United States, 199 U. S. 437; Millard v. Roberts, 202 U. S. 429; United States v. Heinszen, 206 U. S. 370; Hunter v. Pittsburg, 207 U. S. 161; Tobacco Co. v. Werckmeister, 207 U. S. 284; Bitterman v. Railway, 207 U. S. 205; Adair v. United States, 208 U. S. 161; Garfield v. Goldsby, 211 U. S. 249; Twining v. New Jersey, 211 U. S. 78; Shung v. United States, 212 U. S. 566; United States, ex rel., v. Railway, 213 U. S. 366; District of Columbia v. Brooke, 214 U. S. 138; Navigation Co. v. Stranahan, 214 U. S. 320; Sanchez v. United States, 216 U. S. 167; Oil Co. v. Texas, 217 U. S. 114; United States v. Heinze, 218 U. S. 532; Railway v. Connersville, 218 U. S. 336; Flint v. Stone, Tracy Co., 220 U. S. 107; McNulta v. Ralston, 5 O. C. C. (N.S.) 330, 3 O. C. D. 163; Quigley v. State, 5 O. C. C. (N.S.) 638, 3 O. C. D. 310 (1891) [affirmed, no report, 27 Bull. 332]; Beamer v. State, 21 O. C. C. 440, 12 O. C. D. 4; Taylor v. Wapakoneta, 16 O. C. D. 285; State, ex rel., v. Commissioners, 8 O. C. C. (N.S.) 169, 18 O. C. D. 212; Mitchell v. Commissioners, 5 O. N. P. 158, 5 O. D. (N.P.) 262; Fagin v. Ohio Humane Society, 6 O. N. P. 357, 9 O. D. (N.P.) 341; French v. Shirley, 7 O. N. P. 26, 9 O. D. (N.P.) 181; Gawn v. Wilson, 7 O. N. P. 33, 9 O. D. (N.P.) 683; Kealey v. Faulkner, 7 O. N. P. (N.S.) 49, 18 O. D. (N.P.) 498; Ley v. Kirtley, 5 O. N. P. (N.S.) 529, 18 O. D. (N.P.) 280; United States v. In-Lot, Fed. Cases, 15441, 4 O. F. D. 253; Scott v. Toledo, 36 Fed. 385, 6 O. F. D. 192; United States v. Mitchell, 58 Fed. 993, 8 O. F. D. 71; Myers v. Shields, 61 Fed. 713, 8 O. F. D. 239, 31 Bull. 336.

⁴Barron v. Baltimore, 32 U. S. (7 Pet.) 243; Bridge Co. v. Dix, 47 U. S. (6 How.) 507; Withers v. Buckley, 61 U. S. (20 How.) 84; Hepburn v. Griswold, 75 U. S. (8 Wall.) 603; Kohl v. United States, 91 U. S. 367; United States v. Jones, 109 U. S. 513; Gesler v. Commissioners, 146 U. S. 646; Navigation Co. v. United States, 148 U. S. 312; Hill v. United States, 149 U. S. 593; Railway v. Gill, 156 U. S. 649; Brown v. Walker, 161 U. S.

591; Gibson v. United States, 166 U. S. 269; Bauman v. Ross, 167 U. S. 548; Muse v. Hotel Co., 168 U. S. 430; Wilson v. Lambert, 168 U. S. 611; Scudder v. Comptroller, 175 U. S. 32; Scranton v. Wheeler, 179 U. S. 141; Wight v. Davidson, 181 U. S. 371; Detroit v. Parker, 181 U. S. 399; United States v. Lynah, 188 U. S. 445; Williams v. Parker, 188 U. S. 491; Shooting Club v. Caspersen, 193 U. S. 189; Morris v. Hitchcock, 194 U. S. 384; Shepard v. Barron, 194 U. S. 553; McCray v. United States, 195 U. S. 27; Rendering Co. v. Vermont, 207 U. S. 541; Railway v. Kansas, ex rel., 216 U. S. 262; Bridge Co. v. United States, 216 U. S. 177; Sanchez v. United States, 216 U. S. 167; Hooe v. United States, 218 U. S. 322; Louisville and Nashville R. R. v. Mottley, 219 U. S. 467; United States v. Grizzard, 219 U. S. 180; Chicago, Burlington and Quincy R. R. v. McGuire, 219 U. S. 549.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States v. Reid, 53 U. S. (12 How.) 361; United States v. Dawson, 56 U. S. (15 How.) 467; Murray v. Improvement Co., 59 U. S. (18 How.) 272; Twitchell v. Commonwealth, 74 U. S. (7 Wall.) 321; United States v. Cruikshank, 92 U. S. (2 Otto) 542; United States v. Railway, 98 U. S. (8 Otto) 569; Reynolds v. United States, 98 U. S. (8 Otto) 145; Ex parte Virginia, 100 U. S. (10 Otto) 339; Manufacturing Co. Petitioner, 108 U. S. 401; Spies v. Illinois, 123 U. S. 131; In re Sawyer, 124 U. S. 200; Callan v. Wilson, 127 U. S. 540; Eilenbecker v. County, 134 U. S. 31; In re Palliser, 136 U. S. 257; Cook v. United States, 138 U. S. 157; Ball v. United States, 140 U. S. 118; United States v. Van Duzee, 140 U. S. 169; Horner v. United States, 143 U. S. 207; Fong Yue Ting v. United States, 149 U. S. 698; United States v. Patterson, 150 U. S. 65; Sparf v. United States, 156 U. S. 51; Bergemann v. Backer, 157 U. S. 655; Rosen v. United States, 161 U. S. 29; United States v. Zucker, 161 U. S. 475; Wing v. United States, 163 U. S. 228; Publishing Co. v. Fisher, 166 U. S. 464; Barrett v. United States, 169 U. S. 218; Thompson v. Utah, 170 U. S. 343; Kirby v. United States, 174 U. S. 47; Markuson v. Boucher, 175 U. S. 184; Maxwell v. Dow, 176 U. S. 581; Motes v. United States, 178 U. S. 458; Hawaii v. Mankichi, 190 U. S. 197; United States v. Sing Tuck, 194 U. S. 161; West v. Louisiana, 194 U. S. 258; United States, ex rel., v. Williams, 194 U. S. 279; Ohio, ex rel., v. Dollison, 194 U. S. 445; Schick v. United States, 195 U. S. 65; Dorr v. United States, 195 U. S. 138; Burton v. United States, 196 U. S. 283; Rassmussen v. United States, 197 U. S. 516; Burton v. United States, 202 U. S. 344; Serra v. Mortiga, 204 U. S. 470; Tinsley v. Treat, 205 U. S. 20; Ughbanks v. Armstrong, 208 U. S. 481; Packing Co. v. United States, 209 U. S. 56; Twining v. New Jersey, 211 U. S. 78; Haas v. Henkel, 216 U. S. 462; Dille v. State, 34 O. S. 617; Kaiser v. Walsh, 4 O. N. P. (N.S.) 507, 17 O. D. (N.P.) 324; In re McKnight, 7 O. F. D. 286, 52 Fed. 799; United States v. Hung Chang, 14 O. F. D. 257, 126 Fed. 400; State v. Dollison, 14 O. F. D. 380, 194 U. S. 445.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Bank v. Okely, 17 U. S. (4 Wheat.) 235; Bank v. Dudley, 27 U. S. (2 Pet.) 492; Parsons v. Armor, 28 U. S. (3 Pet.) 413; Parsons v. Bedford, 28 U. S. (3 Pet.) 433; Livingston v. Moore, 32 U. S. (7 Pet.) 469; Hepburn v. Dubois, 37 U. S. (12 Pet.) 345; Cary v. Curtis, 44 U. S. (3 How.) 236; Waring v. Clarke, 46 U. S. (5 How.) 441; Navigation Co. v. Bank, 47 U. S. (6 How.) 344; Luther v. Borden, 48 U. S. (7 How.) 1; Webster v. Reid, 52 U. S. (11 How.) 437; Shields v. Thomas, 59 U. S. (18 How.) 253; Murray v. Improvement Co., 59 U. S. (18 How.) 272; Dodge v. Woolsey, 59 U. S. (18 How.) 331; Scott v. Sanford, 60 U. S. (19 How.) 393; Jackson v. Steamboat Magnolia, 61 U. S. (20 How.) 296; Barney v. Schneider, 76 U. S. (9 Wall.) 248; The Justices v. Murray, 76 U. S. (9 Wall.) 274; Kearney v. Core, 79 U. S. (12 Wall.) 275; Legal Tender Cases, 79 U. S. (12 Wall.) 457; Ex parte Lange, 85 U. S. (18 Wall.) 163; Hershfield v. Griffith, 85 U. S. (18 Wall.) 657; Insurance Co. v. Dunn, 86 U. S. (19 Wall.) 214; Walker v. Sauvinet, 92 U. S. (2 Otto) 90; Insurance Co. v. Boon, 95 U. S. (5 Otto) 117; Pearson v. Yewdall, 95 U. S. (5 Otto) 294; The "Abbotsford," 98 U. S. (8 Otto) 440; McElrath v. United States, 102 U. S. 426; Boogher v. Insurance Co., 103 U. S. (12 Otto) 90; Root v. Railway, 105 U. S. (15 Otto) 189; The "Francis Wright," 105 U. S. (15 Otto) 381; Martinton v. Fairbanks, 112 U. S. 670; Auffmordt v. Hedden, 137 U. S. 310; Whitehead v. Shattuck, 138 U. S. 146; Lincoln v. Power, 151 U. S. 436; Sparf v. United States, 156 U. S. 51; Railway v. Commission, 162 U. S. 197; Grayson v. Lynch, 163 U. S. 468; Walker v. Railroad, 165 U. S. 593; Railroad v. Chicago, 166 U. S. 226; Pub-

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lishing Co. v. Fisher, 166 U. S. 464; Springville v. Thomas, 166 U. S. 707; Thompson v. Utah, 170 U. S. 343; Bank v. Guthrie, 173 U. S. 528; Traction Co. v. Hof, 174 U. S. 1; Maxwell v. Dow, 176 U. S. 581; Black v. Jackson, 177 U. S. 349; Chapin v. Fye, 179 U. S. 127; Downes v. Bidwell, 182 U. S. 244; Elliott v. Toeppner, 187 U. S. 327; Rassmussen v. United States, 197 U. S. 516; Twining v. New Jersey, 211 U. S. 78; Mitchell's v. Commissioners, 5 O. N. P. 158, 5 O. D. (N.P.) 262; Haunts v. Lauman Co., 2 O. N. P. (N.S.) 405, 15 O. D. (N.P.) 64; Dodge v. Woolsey, 3 O. F. D. 300, 59 U. S. (18 How.) 331; Lowry v. Mt. Adams and Eden Park Incline Plane Ry. Co., 9 O. F. D. 82, 68 Fed. 827; Klever v. Seawall, 9 O. F. D. 95.

[ARTICLE VIII.]

¹ Excessive bail shall not be required, nor excessive fines imposed, nor ² cruel and unusual punishments inflicted.

¹Evans v. Boller, 4 U. S. (4 Dall.) 342; Ex parte Watkins, 32 U. S. (7 Pet.) 568; Eilenbecker v. County, 134 U. S. 31; Maxwell v. Dow, 176 U. S. 581.

²Wilkerson v. Utah, 99 U. S. (9 Otto) 130; Manning v. French, 133 U. S. 186; In re Kemmler, 136 U. S. 436; McElvaine v. Brush, 142 U. S. 155; O'Neil v. Vermont, 144 U. S. 323; Johnson v. Sayre, 158 U. S. 109; Ughbanks v. Armstrong, 208 U. S. 481; Twining v. New Jersey, 211 U. S. 78; Oil Co. v. Texas, 212 U. S. 86; Weems v. United States, 217 U. S. 349.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Evans v. Bollen, 4 U. S. (4 Dall.) 342; Scott v. Sanford, 60 U. S. (19 How.) 393; Roosevelt v. Meyer, 68 U. S. (1 Wall.) 512.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316; Passenger Cases, 48 U. S. (7 How.) 283; Dodge v. Woolsey, 59 U. S. (18 How.) 331; Scott v. Sanford, 60 U. S. (19 How.) 393; Roosevelt v. Meyer, 68 U. S. (1 Wall.) 512; Bank v. Fenno, 75 U. S. (8 Wall.) 533 [dissenting opinion]; Hepburn v. Griswold, 75 U. S. (8 Wall.) 603; Legal Tender Cases, 79 U. S. (12 Wall.) 457; Palmer v. Marston, 81 U. S. (14 Wall.) 10; Steamship Co. v. Tinker, 94 U. S. (4 Otto) 238; Ex parte Virginia, 100 U. S. (10 Otto) 339 [dissenting opinion]; United States v. Harris, 106 U. S. (16 Otto) 629; Civil Rights Cases, 109 U. S. 3; Leisy v. Hardin, 135 U. S. 100; Railroad v. Baugh, 149 U. S. 368; Ting v. United States, 149 U. S. 698; Downes v. Bidwell, 182 U. S. 244; Lottery Case, 188 U. S. 321; Securities Co. v. United States, 193 U. S. 197; McCray v. United States, 195 U. S. 27; Kansas v. Colorado, 206 U. S. 46; Railway v. State, 11 O. C. C. (N.S.) 482, 21 O. C. D. 20; McCray v. United States, 14 O. F. D. 385, 195 U. S. 27.

[ARTICLE XI.]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Cohens v. Virginia, 19 U. S. (6 Wheat.) 264; Osborn v. Bank, 22 U. S. (9 Wheat.) 738; Bank v. Bank, 22 U. S. (9 Wheat.) 904; Slaves v. Madrazo, 26 U. S. (1 Pet.) 110; Cherokee Nation v. Georgia, 26 U. S. (5 Pet.) 1; New Jersey v. New York, 30 U. S. (5 Pet.) 284; Ex parte Madrazzo, 32 U. S. (7 Pet.) 627; McNutt v. Bland, 43 U. S. (2 How.) 9; Luther v. Borden, 32 U. S. (7 How.) 1; Florida v. Georgia, 58 U. S. (17 How.) 478; Railroad Co. v. Mississippi, 102 U. S. (12 Otto) 135; United States v. Lee, 106 U. S. (16 Otto) 196; Louisiana v. Jumel, 107 U. S. (17 Otto) 711; Ames v. Kansas, ex rel., 111 U. S. 449; Marye v. Parsons, 114 U. S. 325; In re Ayers, 123 U. S. 443; County v. Luning, 133 U. S. 529; Hans v. Louisiana, 134 U. S. 1; Pennoyer v. McConnaughy, 140 U. S. 1; United States v. Texas, 143 U. S. 621; In re Tyler, 149 U. S. 164; Reagan v. Trust Co., 154 U. S. 362; Scott v. Donald, 165 U. S. 107; Tindal v. Wesley, 167 U. S. 204; Smyth v. Ames, 169 U. S. 466; Fitts v. McGhee, 172 U. S. 516; Louisiana v. Texas, 176 U. S. 1; Wesley v. Eells, 177 U. S. 370; Railroad Co. v. Adams, 180 U. S. 28; Prout v. Starr, 188 U. S. 537; South Dakota v. North Carolina, 192 U. S. 286; Barney v. New York City, 193 U. S. 430; Supply Co. v. Bruce, 194 U. S. 601; Traction Co. v. Mining Co., 196 U. S. 239; Iron Co. v. Iron Co., 197

U. S. 463; *Graham v. Folsom*, 200 U. S. 248; *Gunter v. Railroad Co.*, 200 U. S. 273; *Virginia v. West Virginia*, 206 U. S. 290; *Ex parte Young*, 209 U. S. 123; *Murray v. Distilling Co.*, 213 U. S. 151; *Ludwig v. Telegraph Co.*, 216 U. S. 146; *Telegraph Co. v. Andrews*, 216 U. S. 165; *Herndon v. Railway*, 218 U. S. 135; *Forging & Tool Co. v. Griffith*, 5 O. N. P. (N.S.) 566, 18 O. D. (N.P.) 261; *Arbuckle v. Blackburn*, 13 O. F. D. 44, 51 C. C. A. 122, 113 Fed. 616.

[ARTICLE XII.]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

In re Green, 134 U. S. 377; *McPherson v. Blacker*, 146 U. S. 1.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Osborn v. Nicholson, 80 U. S. (13 Wall.) 654; *Slaughter House Cases*, 83 U. S. (16 Wall.) 36; *Boyce v. Tabb*, 85 U. S. (18 Wall.) 546; *United States v. Reese*, 92 U. S. (2 Otto) 214 [dissenting opinion]; *Ex parte Virginia*, 100 U. S. (10 Otto) 339; *Neal v. Delaware*, 103 U. S. (13 Otto) 370 [dissenting opinion]; *United States v. Harris*, 106 U. S. 629; *United States v. Stanley*, 109 U. S. 3; *Elk v. Wilkins*, 112 U. S. 94; *Ex parte Wilson*, 114 U. S. 417; *Baldwin v. Franks*, 120 U. S. 678 [dissenting opinion]; *Logan v. United States*, 144 U. S. 263; *Wong Wing v. United States*, 163 U. S. 228; *Plersy v. Ferguson*, 163 U. S. 537; *Robertson v. Baldwin*, 165 U. S. 275; *United States v. Wong Kim Ark*, 169 U. S. 649; *Maxwell v. Dow*, 176 U. S. 581; *Downes v. Bidwell*, 182 U. S. 244; *Patterson v. Bark Eudora*, 190 U. S. 169; *The Chickasaw Freedmen*, 193 U. S. 115; *Kepner v. United States*, 195 U. S. 100; *Clyatt v. United States*, 197 U. S. 207; *Hodges v. United States*, 203 U. S. 1; *Franklin v. South Carolina*, 218 U. S. 161; *Bailey v. Alabama*, 211 U. S. 452; *Bailey v. Alabama*, 219 U. S. 219.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Art.XIV, § 1. CONSTITUTION OF THE UNITED STATES.

ARTICLE XIV.

SECTION 1. ¹ All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall ² make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State ³ deprive any person of life, liberty, or property, without due process of law; nor ⁴ deny to any person within its jurisdiction the equal protection of the laws.

This section does not render invalid the statute which creates the state liability board of awards and confers powers thereon (G. C. § 1465-37, et seq., 102 v. 525): *State, ex rel., v. Creamer*, 85 O. S. 349.

A construction of G. C. § 1409, which would make it prohibit the sale or having in possession for sale plumage of the white heron would render the statute unconstitutional in that it would be in violation of the fourteenth amendment of the federal constitution: *Solomon v. State*, 11 O. N. P. (N.S.) 525.

The act of May 31, 1911, relating to preservation of the health of females employed in manufacturing, mechanical, mercantile and other establishments, is not in derogation of the constitutional right of freedom of contract, nor is the classification arbitrary or the exemption unreasonable which is therein established, but the act is justified on the ground of public health, morals and the general welfare, and is valid and enforceable: *Ex parte Hawley*, 12 O. N. P. (N.S.) 1 [affirmed without opinion, *Ex parte Hawley*, 85 O. S. 494].

Snell v. Street Railway Co., 16 O. C. C. 633, 9 O. C. D. 264 [reversed, *Snell v. Ry.*, 60 O. S. 256]; *Bauer v. Casey*, 6 O. C. C. (N.S.) 69, 16 O. C. D. 598; *In re Application of Bachtel*, 11 O. C. C. (N.S.) 537, 21 O. C. D. 159; *State v. Kuhn*, 8 O. N. P. 197, 11 O. D. (N.P.) 321; *Maltby v. Railway Co.*, 13 O. D. (N.P.) 280; *McKisson v. Wright*, 15 O. D. (N.P.) 105.

For discussion of legislation concerning civil rights see: *Hornbuckle v. Toombs*, 85 U. S. (18 Wall.) 648; *Strauder v. West Virginia*, 100 U. S. (10 Otto) 303; *Ex parte Virginia*, 100 U. S. (10 Otto) 339; *Neal v. Delaware*, 103 U. S. (13 Otto) 370; *United States v. Harris*, 106 U. S. (16 Otto) 629.

¹ **CITIZENS OF UNITED STATES.** *Slaughter House Cases*, 83 U. S. (16 Wall.) 36; *United States v. Reese*, 92 U. S. (2 Otto) 214; *Robertson v. Cease*, 97 U. S. (7 Otto) 646; *Railroad Co. v. Koontz*, 104 U. S. (14 Otto) 5; *Elk v. Wilkins*, 112 U. S. 94; *Baldwin v. Franks*, 120 U. S. 678; *Wisconsin v. Insurance Co.*, 127 U. S. 265; *Anderson v. Watt*, 138 U. S. 694; *Boyd v. Thayer*, 143 U. S. 135; *Shaw v. Mining Co.*, 145 U. S. 444; *Fong Yue Ting v. United States*, 149 U. S. 698; *Hooper v. California*, 155 U. S. 648; *United States v. Wong Kim Ark*, 169 U. S. 649; *Blake v. McClung*, 172 U. S. 239; *Insurance Co. v. Daggs*, 172 U. S. 557; *Downes v. Bidwell*, 182 U. S. 244; *Giles v. Teasley*, 193 U. S. 146; *Pope v. Williams*, 193 U. S. 621; *Printing Co. v. Edwards*, 194 U. S. 377; *Erie Ry. v. Kane*, 15 O. F. D. 614, 83 C. C. A. 564, 155 Fed. 118; circuit decision, contra: see *Kane v. Railway*, 14 O. F. D. 213, which was reversed, *Kane v. Railway*, 14 O. F. D. 452; *State v. McCann*, 21 O. S. 198; *Bergman v. Cleveland*, 39 O. S. 651; *State v. Board of Education*, 76 O. S. 297; *New York Insurance Co. v. Block*, 12 O. C. C. 224, 6 O. C. D. 166.

² **PRIVILEGES AND IMMUNITIES.** *Slaughter House Cases*, 83 U. S. (16 Wall.) 36; *Bradwell v. State*, 83 U. S. (16 Wall.) 130; *Bartemeyer v. Iowa*, 85 U. S. (18 Wall.) 129; *Minor v. Happersett*, 88 U. S. (21 Wall.) 162; *Hall v. De Cuir*, 95 U. S. (5 Otto) 485; *Davidson v. New Orleans*, 96 U. S. (6 Otto) 97; *Virginia v. Rives*, 100 U. S. (10 Otto) 313; *Vance v. Vance*, 108 U. S. 514; *Civil Rights Cases*, 109 U. S. 3; *United States v. Gale*, 109 U. S. 65; *Butcher's Co. v. Crescent City Co.*, 111 U. S. 746; *Presser v. Illinois*, 116 U. S. 252; *Fire Association v. New York*, 119 U. S. 110; *Baldwin v. Franks*, 120 U. S. 678; *Kidd v. Pearson*, 128 U. S. 1; *Beatty v. Benton*, 135 U. S. 244; *Leisy v. Hardin*, 135 U. S. 100; *In re Kemmler*, 136 U. S. 436; *Caldwell v. Texas*, 137 U. S. 692; *In re Wood*, 140 U. S. 278; *Boyd v. Thayer*, 143 U. S. 135; *O'Neil v. Vermont*, 144 U. S. 323; *Brown v. Massachusetts*, 144 U. S. 573; *Hallinger v. Davis*, 146 U. S. 314; *Giozza v. Tiernan*, 148 U. S. 657; *Loeber v. Schroeder*, 149 U. S. 580; *Duncan v. Missouri*, 152 U. S. 377; *Miller v. Texas*, 153 U. S. 535; *In re Lockwood*, 154 U. S. 116; *Gray v. Connecticut*, 159 U. S. 74; *Moore v. Missouri*, 159 U. S. 673; *Gibson v. Mississippi*, 162 U. S. 565; *Dibble v. Land Co.*, 163 U. S. 63; *Murray v. Louisiana*, 163 U. S. 101; *Plessy v. Ferguson*, 163 U. S. 537; *Stave Co. v. County*, 166 U. S. 648; *Holden v. Hardy*, 169 U. S. 366; *Williams v. Mississippi*, 170 U. S. 213; *Railway Co. v. Texas*, 170 U. S. 226; *Blake v. McClung*, 172 U. S. 239; *Chemical Co. v. Mines Co.*, 172 U. S. 465; *Insurance Co. v. Daggs*, 172 U. S. 557; *Markuson v. Boucher*, 175 U. S. 184; *Cumming v. Board*, 175 U. S. 528; *Maxwell v. Dow*, 176 U. S. 581; *Oil Co. v. Texas*, 177 U. S. 28; *Sully v. Bank*, 178 U. S. 289; *Williams v. Fears*, 179 U. S. 270; *Railway Co. v. Kentucky*, 179 U. S. 388; *Mallett v. North Carolina*, 181 U. S. 589; *Arkansas v. Coal Co.*, 183 U. S. 185; *Railway Co. v. Purdy*, 185 U. S. 148; *Swafford v. Templeton*, 185 U. S. 487; *Home v. New York*, 187 U. S. 155; *Chadwick v. Kelley*, 187 U. S. 540; *Manley v. Park*, 187 U. S. 547; *Power Co. v. Railway Co.*, 187 U. S. 569; *Giles v. Harris*, 189 U. S. 475; *Railway Co. v. Flannigan*, 192 U. S. 29; *Adams v. New York*, 192 U. S. 585; *Ripley v. Texas*, 193 U. S. 504; *Cox v. Texas*, 202 U. S. 446; *Hodges v. United States*, 203 U. S. 1; *Martin v. Railway Co.*, 203 U. S. 284; *Board v. Illinois*, 203 U. S. 553; *Ballard v. Hunter*, 204 U. S. 241; *Bacon v. Walker*, 204 U. S. 311; *Kessler v. Treat*, 205 U. S. 33; *Mining Co. v. Fulton*, 205 U. S. 60; *Patterson v. Colorado*, 205 U. S. 454; *Twining v. New Jersey*, 211 U. S. 78; *France v. State*, 57 O. S. 1; *Humphreys v. State*, 70 O. S. 67; *The State, ex rel. Webber, v. Felton, et al.*, 77 O. S. 554; *Hammond v. The State of Ohio*, 78 O. S. 15; *Rhoades v. City of Toledo*, 6 O. C. C. (N.S.) 9, 3 O. C. D. 325 [affirmed, 51 O. S. 562]; *Freeman v. Hunter*, 7 O. C. C. 117, 3 O. C. D. 689 [affirmed, no report, 51 O. S. 574]; *Schmeltz v. The State of Ohio*, 8 O. C. C. 82, 4 O. C. D. 287; *City of Cincinnati v. Steinkamp*, 9 O. C. C. 178, 6 O. C. D. 85 [affirmed, 54 O. S. 284, 43 N. E. Rep. 490]; *Gage v. The State*, 1 O. C. C. (N.S.) 221, 14

O. C. D. 724 [reversed, *State v. Gage*, 72 O. S. 210, 73 N. E. Rep. 1078]; *Hughes v. State*, 9 O. C. C. (N.S.) 369, 19 O. C. D. 237; *Wickham v. Coyner*, 12 O. C. C. (N.S.) 433; *State of Ohio v. Ottman*, 4 O. N. P. 195, 6 O. D. (N.P.) 265; *State v. Norton*, 5 O. N. P. 183, 7 O. D. (N.P.) 354; *Columbus v. Jeffrey*, 2 O. N. P. (N.S.) 85, 14 O. D. (N.P.) 609; *State v. Gilfillan*, 3 O. N. P. (N.S.) 153, 15 O. D. (N.P.) 756; *Fields v. State*, 4 O. N. P. (N.S.) 401, 17 O. D. (N.P.) 16.

³ **DUE PROCESS OF LAW. A. General Principles.** *Bartemeyer v. Iowa*, 85 U. S. (18 Wall.) 129; *Walker v. Sauvinet*, 92 U. S. (2 Otto) 90; *United States v. Cruikshank*, 92 U. S. (2 Otto) 542; *Munn v. Illinois*, 94 U. S. (4 Otto) 113; *McMillen v. Anderson*, 95 U. S. (5 Otto) 37; *Pennoyer v. Neff*, 95 U. S. (5 Otto) 714; *Davidson v. New Orleans*, 96 U. S. (6 Otto) 97; *Virginia v. Rives*, 100 U. S. (10 Otto) 313; *Kelly v. Pittsburgh*, 104 U. S. (14 Otto) 78; *Gross v. Mortgage Co.*, 108 U. S. 477; *Civil Rights Cases*, 109 U. S. 3; *Louisiana v. Mayor*, 109 U. S. 285; *Hurtado v. California*, 110 U. S. 516; *Hagar v. District*, 111 U. S. 701; *Union Co. v. City Co.*, 111 U. S. 746; *Wurts v. Hoagland*, 114 U. S. 606; *Kentucky Railroad Tax Cases*, 115 U. S. 321; *Railway v. Humes*, 115 U. S. 512; *Presser v. Illinois*, 116 U. S. 252; *Yick Wo v. Hopkins*, 118 U. S. 356; *Ker v. Illinois*, 119 U. S. 436; *Spies v. Illinois*, 123 U. S. 131; *Mugler v. Kansas*, 123 U. S. 623; *In re Sawyer*, 124 U. S. 200; *Spencer v. Merchant*, 125 U. S. 345; *Railway v. Mackey*, 127 U. S. 205; *Railway v. Herrick*, 127 U. S. 210; *Powell v. Pennsylvania*, 127 U. S. 678; *Mahon v. Justice*, 127 U. S. 700; *Kidd v. Pearson*, 128 U. S. 1; *Railway v. Alabama*, 128 U. S. 96; *Walston v. Nevin*, 128 U. S. 578; *Railway v. Beckwith*, 129 U. S. 26; *Dent v. West Virginia*, 129 U. S. 114; *Freeland v. Williams*, 131 U. S. 405; *Palmer v. McMahon*, 133 U. S. 660; *Eilenbecker v. County*, 134 U. S. 31; *Railroad v. Pennsylvania*, 134 U. S. 232; *Railway v. Minnesota*, 134 U. S. 467; *Leisy v. Hardin*, 135 U. S. 100; *Beatty v. Benton*, 135 U. S. 244; *In re Kemmler*, 136 U. S. 436; *In re Converse*, 137 U. S. 624; *Caldwell v. Texas*, 137 U. S. 692; *Kauffman v. Wootters*, 138 U. S. 285; *Indeling v. Chaffe*, 143 U. S. 301; *Fielden v. Illinois*, 143 U. S. 452; *Budd v. New York*, 143 U. S. 517; *New York, ex rel., v. Squire*, 145 U. S. 175; *Brown v. Smart*, 145 U. S. 454; *Morley v. Railway*, 146 U. S. 162; *Railway v. Denton*, 146 U. S. 202; *Hallinger v. Davis*, 146 U. S. 314; *Yesler v. Commissioners*, 146 U. S. 646; *Giozza v. Tiernan*, 148 U. S. 657; *In re Frederick*, 149 U. S. 70; *Railway v. Pinkney*, 149 U. S. 194; *Loeber v. Schroeder*, 149 U. S. 580; *Fong Yue Ting v. United States*, 149 U. S. 698; *Powell v. County*, 150 U. S. 433; *Railway v. Bristol*, 151 U. S. 556; *Montana Co. v. Mining Co.*, 152 U. S. 160; *Snell v. Chicago*, 152 U. S. 191; *Duncan v. Missouri*, 152 U. S. 377; *Marchant v. Railroad*, 153 U. S. 380; *Brass v. Stoesser*, 153 U. S. 391; *Scott v. McNeal*, 154 U. S. 34; *Railway v. Gill*, 156 U. S. 649; *Bergemann v. Backer*, 157 U. S. 655; *Gray v. Connecticut*, 159 U. S. 74; *Land Co. v. Minnesota*, 159 U. S. 526; *Moore v. Missouri*, 159 U. S. 673; *Kohl v. Lehlback*, 160 U. S. 293; *Railway v. Iowa*, 160 U. S. 389; *Eldridge v. Trezevant*, 160 U. S. 452; *Lowe v. Kansas*, 163 U. S. 81; *Talton v. Mayes*, 163 U. S. 376; *Plessy v. Ferguson*, 163 U. S. 537; *Irrigation District v. Bradley*, 164 U. S. 112; *Railway v. Nebraska*, 164 U. S. 403; *Railway v. Chicago*, 164 U. S. 454; *Turnpike Co. v. Sandford*, 164 U. S. 578; *Railway v. Mathews*, 165 U. S. 1; *Allgeyer v. Louisiana*, 165 U. S. 578; *Railroad v. New York*, 165 U. S. 628; *Railway v. Chicago*, 166 U. S. 226; *In re Eckart*, 166 U. S. 481; *Stave Co. v. Butler County*, 166 U. S. 648; *Supply Co. v. Brooklyn*, 166 U. S. 685; *Sentell v. Railway*, 166 U. S. 698; *Davis v. Massachusetts*, 167 U. S. 43; *Bank v. Pennsylvania*, 167 U. S. 461; *Miller v. Railway*, 168 U. S. 131; *Hodgson v. Vermont*, 168 U. S. 262; *Nobles v. Georgia*, 168 U. S. 398; *Castillo v. McConnico*, 168 U. S. 674; *Holden v. Hardy*, 169 U. S. 366; *Savings Society v. Multnomah County*, 169 U. S. 421; *Smyth v. Ames*, 169 U. S. 466; *Backus v. Depot Co.*, 169 U. S. 557; *Wilson v. North Carolina*, 169 U. S. 586; *King v. Mullins*, 171 U. S. 404; *Blake v. McClung*, 172 U. S. 239; *Norwood v. Baker*, 172 U. S. 269; *Railway v. New Whatcom*, 172 U. S. 314; *Clark v. Kansas City*, 172 U. S. 334; *Insurance Co. v. Daggs*, 172 U. S. 557; *Insurance Co. v. Spratley*, 172 U. S. 602; *McQuade v. Trenton*, 172 U. S. 636; *Wilson v. Eureka City*, 173 U. S. 32; *Trust Co. v. Campbell*, 173 U. S. 84; *Dewey v. Des Moines*, 173 U. S. 193; *Railway v. Paul*, 173 U. S. 404; *Paper Co. v. Watson*, 173 U. S. 443; *Bridge Co. v. Henderson City*, 173 U. S. 592; *Railway v. Smith*, 173 U. S. 684; *Brown v. New Jersey*, 175 U. S. 172; *Markuson v. Boucher*, 175 U. S. 184; *King v. Cross*, 175 U. S. 396; *Abbott v. Bank*, 175 U. S. 409; *Cumming v. Board*, 175 U. S. 528; *Bolln v. Nebraska*, 176 U. S. 83; *Roller v. Holly*, 176 U. S. 398; *Maxwell v. Dow*, 176 U. S. 581; *Oil Co. v. Texas*, 177 U. S. 28; *Gundling v. Chicago*, 177 U. S. 183; *Oil Co. v. Indiana*, 177 U. S. 190; *Railway v. Schmidt*, 177 U. S. 220; *Timber Co. v. Comptroller*, 177 U. S. 318; *Railway v. Gardner*, 177 U. S. 332; *Osborne v. San Diego Co.*, 178 U. S. 22; *Sully v. Bank*, 178 U. S. 289; *Wheeler v. Railway*, 178 U. S. 321; *Taylor v. Beckham*, 178 U. S. 548; *Chapin v. Fye*, 179 U. S. 127; *Railway v. Kentucky*, 179 U. S. 388; *Davis v. Burke*, 179 U. S. 399; *Tyler v. Judges*, 179 U. S. 405; *Lampasas v. Bell*, 180 U. S. 276; *Cargill Co. v. Minnesota*, 180 U. S. 452; *Lombard v. Commissioners*, 181 U. S. 33; *French v. Paving Co.*, 181 U. S. 324; *Wight v. Davidson*, 181 U. S. 371; *Tonawanda v. Lyon*, 181 U. S. 389; *Webster v. Fargo*, 181 U. S. 394; *Shumate v. Heman*, 181 U. S. 402; *Mallett v. North Carolina*, 181 U. S. 589; *Carson v. Sewerage Comm.*, 182 U. S. 398; *Simon v. Craft*, 182 U. S. 427; *Storti v. Massachusetts*, 183 U. S. 138; *Greene v. Henkel*, 183 U. S. 249; *Orr v. Gilman*, 183 U. S. 278; *McChord v. Railway Co.*, 183 U. S. 483; *Railway Co. v. Kentucky*, 183 U. S. 503; *Minder v. Georgia*, 183 U. S. 559; *Railway Co. v. 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Griffith, 18 O. D. (N.P.) 261.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Minor v. Happersett, 88 U. S. (21 Wall.) 162; *United States v. Kagama*, 118 U. S. 375; *McPherson v. Blacker*, 146 U. S. 1; *Pollock v. Trust Co.*, 157 U. S. 429.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Worthy v. Commissioners, 76 U. S. (9 Wall.) 611.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Keith v. Clark, 97 U. S. 454.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Virginia v. Rives, 100 U. S. 313; *Ex parte Virginia*, 100 U. S. 339; *United States v. Harris*, 106 U. S. 629.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

White v. Hart, 80 U. S. (13 Wall.) 646; *Slaughter House Cases*, 83 U. S. (16 Wall.) 36; *Hornbuckle v. Toombs*, 85 U. S. (18 Wall.) 648; *Minor v. Happersett*, 88 U. S. (21 Wall.) 162; *United States v. Reese*, 92 U. S. (2 Otto) 214; *United States v. Cruikshank*, 92 U. S. (2 Otto) 542; *Ex parte Virginia*, 100 U. S. (10 Otto) 339; *Neal v. Delaware*, 103 U. S. (13 Otto) 370; *United States v. Harris*, 106 U. S. (16 Otto) 629; *Civil Rights Cases*, 109 U. S. 3; *Elk v. Wilkins*, 112 U. S. 94; *Baldwin v. Franks*, 120 U. S. 678; *St. Louis v. Amy*, 120 U. S. 600; *Logan v. United States*, 144 U. S. 263; *McPherson v. Blacker*, 146 U. S. 1; *United States v. Wong Kim Ark*, 169 U. S. 649; *Maxwell v. Dow*, 176 U. S. 581; *Giles v. Harris*, 189 U. S. 475; *James v. Bowman*, 190 U. S. 127; *Giles v. Teasley*, 193 U. S. 146; *Clyatt v. United States*, 197 U. S. 207.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

ANALYTICAL INDEX

TO THE

Constitution of the United States.

AND THE

AMENDMENTS THERETO.

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New States may be admitted by Congress into this Union.....	4	3	1
Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States.....	4	3	2
Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two-thirds of both houses of.....	5
Persons engaged in insurrection or rebellion against the United States disqualified for Senators or Representatives in.....[Amendments.]	14	3	..
But such disqualification may be removed by a vote of two-thirds of both Houses of. [Amendments.]	14	3	..
Shall have power to enforce, by appropriate legislation, the Thirteenth Amendment	13	2	..
Shall have power to enforce, by appropriate legislation, the Fourteenth Amendment	14	5	..
Shall have power to enforce, by appropriate legislation, the Fifteenth Amendment. [Amendments.]	15	2	..
<i>Consent.</i> No State shall be deprived of its equal suffrage in the Senate without its.....	5
<i>Consent of Congress.</i> No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the.....	1	9	8
No State shall lay any imposts, or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the.....	1	10	2
No State shall lay any duty of tonnage, keep troops or ships of war in time of peace, without the.....	1	10	3
No State shall enter into any agreement or compact with another State, or with a foreign power, without the.....	1	10	3
No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the.....	1	10	3
No new state shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures thereof, as well as the.....	4	3	1
<i>Consent</i> of the legislature of the State in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, by the.....	1	8	17
<i>Consent</i> of the legislatures of the States and of Congress. No State shall be formed by the junction of two or more States, or parts of States, without the.....	4	3	1
<i>Consent of the other.</i> Neither House, during the session of Congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the.....	1	5	4
<i>Consent of the owner.</i> No soldier shall be quartered, in time of peace, in any house without the	3
<i>Consent of the Senate.</i> The President shall have power to make treaties, by and with the advice and	2	2	2
The President shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers created by law, and not otherwise herein provided for, by and with the advice and.....	2	2	2
<i>Constitution</i> in the Government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by the.....	1	8	18
<i>Constitution</i> , shall be eligible to the office of President. No person except a natural-born citizen, or a citizen at the time of the adoption of the.....	2	1	4
<i>Constitution.</i> The President, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the.....	2	1	7

	Art.	Sec.	Cl.
<i>Constitution</i> , laws, and treaties of the United States. The judicial power shall extend to all cases arising under the.....	3	2	1
<i>Constitution</i> shall be so construed as to prejudice any claims of the United States, or of any State (in respect to territory or other property of the United States). Nothing in the.....	4	3	2
<i>Constitution</i> . The manner in which amendments may be proposed and ratified.....	5	..	..
<i>Constitution</i> as under the Confederation shall be valid. All debts and engagements contracted before the adoption of the.....	6	..	1
<i>Constitution</i> and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The	6	..	2
The judges in every State, anything in the Constitution or laws of a State to the contrary notwithstanding, shall be bound thereby.....	6	..	2
<i>Constitution</i> . All officers, legislative, executive, and judicial, of the United States, and of the several States, shall be bound by an oath to support the.....	6	..	3
But no religious test shall ever be required as a qualification for any office or public trust	6	..	3
<i>Constitution</i> between the States so ratifying the same. The ratification of the conventions of nine States shall be sufficient for the establishment of the.....	7	..	..
<i>Constitution</i> , of certain rights, shall not be construed to deny or disparage others retained by the people. The enumeration in the.....[Amendments.]	9	..	..
<i>Constitution</i> , nor prohibited by it to the States, are reserved to the State respectively, or to the people. Powers not delegated to the United States by the [Amendments.]	10	..	..
<i>Constitution</i> , and then engaged in rebellion against the United States. Disqualification for office imposed upon certain class of persons who took an oath to support the	14	3	..
<i>Constitution</i> . Done in convention by the unanimous consent of the States present, September 17, 1787	7	..	..
<i>Contracts</i> . No state shall pass any <i>ex post facto</i> law, or law impairing the obligation of..	1	10	1
<i>Controversies</i> to which the United States shall be a party: between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; between a State or its citizens and foreign states, citizens, or subjects. The judicial power shall extend to.....	3	2	1
<i>Convene Congress</i> , or either House, on extraordinary occasions. The President may.....	2	3	..
<i>Convention</i> for proposing amendments to the Constitution. Congress, on the application of two-thirds of the legislatures of the States, may call a.....	5	..	..
<i>Convention</i> , by the unanimous consent of the States present on the 17th of September, 1787. Adoption of the Constitution in.....	7	..	..
<i>Conventions</i> of nine States shall be sufficient for the establishment of the Constitution. The ratification of the.....	7	..	..
<i>Conviction</i> in cases of impeachment shall not be had without the concurrence of two-thirds of the members present.....	1	3	6
<i>Copyrights</i> to authors for limited times. Congress shall have power to provide for.....	1	8	8
<i>Corruption of blood</i> . Attainder of treason shall not work.....	3	3	2
<i>Counsel</i> for his defense. In all criminal prosecutions the accused shall have the assistance of	6	..	..
<i>Counterfeiting</i> the securities and current coin of the United States. Congress shall provide for the punishment of.....	1	8	6
<i>Courts</i> . Congress shall have power to constitute tribunals inferior to the Supreme Court.	1	8	9
<i>Courts of Law</i> . Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the heads of departments, or in the	2	2	2
<i>Courts</i> as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court, and such inferior.....	3	1	..
<i>Courts</i> . The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	..
Their compensation shall not be diminished during their continuance in office.....	3	1	..
<i>Credit</i> . No State shall emit bills of.....	1	10	1
<i>Credit</i> of the United States. Congress shall have power to borrow money on the.....	1	8	2
<i>Credit</i> shall be given in every other State to the public acts, records, and judicial proceedings of each State. Full faith and.....	4	1	..
<i>Crime</i> , unless on a presentment of a grand jury. No person shall be held to answer for a capital or otherwise infamous.....[Amendments.]	5	..	..
Except in cases of military and naval forces, or in the militia when in actual service	5	..	..
<i>Crimes and misdemeanors</i> . The President, Vice-President, and all civil officers shall be removed on impeachment for, and conviction of, treason, bribery, or other.....	2	4	..
<i>Crimes</i> , except in cases of impeachment, shall be tried by jury. All.....	3	2	3
They shall be tried in the State within which they may be committed.....	3	2	3
When not committed in a State, they shall be tried at the places which Congress may, by law, have provided.....	3	2	3
<i>Criminal prosecutions</i> , the accused shall have a speedy and public trial by jury in the State and district where the crime was committed. In all.....[Amendments.]	6	..	..
He shall be informed of the nature and cause of the accusation....[Amendments.]	6	..	..
He shall be confronted with the witnesses against him.....[Amendments.]	6	..	..
He shall have compulsory process for obtaining witnesses in his favor. [Amendments.]	6	..	..
He shall have the assistance of counsel in his defense.....[Amendments.]	6	..	..
<i>Criminate himself</i> . No person as a witness shall be compelled to.....[Amendments.]	5	..	..
<i>Cruel and unusual punishments</i> inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor.....[Amendments.]	8	..	..

D.

	Art.	Sec.	Cl.
<i>Danger</i> as will not admit of delay. No State shall without the consent of Congress, engage in war, unless actually invaded, or in such imminent.....	1	10	3
<i>Day</i> on which they shall vote for President and Vice-President, which shall be the same throughout the United States. Congress may determine the time of choosing the electors, and the.....	2	1	3
<i>Day to day</i> and may be authorized to compel the attendance of absent members. A smaller number than a quorum of each House may adjourn from.....	1	5	1
<i>Death</i> , resignation, or inability of the President, the powers and duties of his office shall devolve on the Vice-President. In case of the.....	2	1	5
<i>Death</i> , resignation, or inability of the President. Congress may provide, by law, for the case of the removal	2	1	5
<i>Debt</i> of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public .....[Amendments.]	14	4	..
<i>Debts</i> . No State shall make anything but gold and silver coin a tender in payment of....	1	10	1
<i>Debts</i> and provide for the common defense and general welfare of the United States. Congress shall have power to pay the.....	1	8	1
<i>Debts</i> and engagements contracted before the adoption of this Constitution shall be as valid against the United States, under it, as under the Confederation.....	6	..	1
<i>Debts</i> or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any State shall assume or pay any.....[Amendments.]	14	4	..
<i>Declare war</i> , grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to.....	1	8	11
<i>Defense</i> promote the general welfare, etc. To insure the common.....[Preamble.]	..	..	..
<i>Defense</i> and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common.....	1	8	1
<i>Defense</i> . In all criminal prosecutions the accused shall have the assistance of counsel for his .....[Amendments.]	6	..	..
<i>Delaware</i> entitled to one Representative in the first Congress.....	1	2	3
<i>Delay</i> . No State shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of.....	1	10	3
<i>Delegated</i> to the United States, nor prohibited to the States, are reserved to the States, or to the people. The powers not.....[Amendments.]	10	..	..
<i>Deny or disparage</i> others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to.....[Amendments.]	9	..	..
<i>Departments</i> upon any subject relating to their duties. The President may require the written opinion of the principal officers in each of the executive.....	2	2	1
<i>Departments</i> . Congress may by law vest the appointment of inferior officers in the heads of	2	2	2
<i>Direct tax</i> shall be laid unless in proportion to the census or enumeration. No capitation or other	1	9	4
<i>Direct taxes</i> and Representatives, how apportioned among the several States. [Repealed by the second section of the Fourteenth Amendment.....	1	2	3
<i>Disability</i> of the President and Vice-President. Provisions in case of the.....	2	1	5
<i>Disability</i> . No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who, having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, to support the Constitution, afterward engaged in insurrection or rebellion against the United States. [Amendments.]	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such [Amendments.]	14	3	..
<i>Disagreement</i> between the two Houses as to the time of adjournment, the President may adjourn them to such time as he may think proper. In case of.....	2	3	..
<i>Disorderly behavior</i> . Each House may punish its members for.....	1	5	2
And with the concurrence of two-thirds expel a member.....	1	5	2
<i>Disparage</i> others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or.....[Amendments.]	9	..	..
<i>Disqualification</i> . No Senator or Representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created, or its emoluments increased, during such term.....	1	6	2
No person holding any office under the United States shall be a member of either House during his continuance in office.....	1	6	2
No person shall be a member of either House, presidential elector, or hold any office under the United States, or any State, who, having previously sworn to support the Constitution, afterward engaged in insurrection or rebellion. [Amendments.]	14	3	..
But Congress may, by vote of two-thirds of each House, remove such disability. [Amendments.]	14	3	..
<i>District of Columbia</i> . Congress shall exercise exclusive legislation in all cases over the....	1	8	17
<i>Dockyards</i> . Congress shall have exclusive authority over all places purchased for the erection of	1	8	17
<i>Domestic tranquility</i> , provide for the common defense, etc. To insure.....[Preamble.]	..	..	..
<i>Domestic violence</i> . The United States shall protect each State against invasion and.....	4	4	..

	Art.	Sec.	Cl.
<i>Due process of law.</i> No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without [Amendments.]	5	..	..
No State shall deprive any person of life, liberty, or property, without [Amendments.]	14	1	..
<i>Duties and powers</i> of the office of President, in case of his death, removal, or inability to act, shall devolve on the Vice-President.....	2	1	5
In case of the disability of the President and Vice-President, Congress shall declare what officer shall act.....	2	1	5
<i>Duties, imposts, and excises.</i> Congress shall have power to lay and collect taxes.....	1	8	1
Shall be uniform throughout the United States.....	1	8	1
<i>Duties</i> shall be laid on articles exported from any State. No tax or.....	1	9	5
<i>Duties</i> in another State. Vessels clearing in the ports of one State shall not be obliged to pay	1	9	6
On imports and exports, without the consent of Congress, except where necessary for executing its inspection laws. No State shall lay any.....	1	10	2
The net produce of all such duties shall be for the use of the Treasury of the United States.	1	10	2
All laws laying such duties shall be subject to the revision and control of Congress..	1	10	2
<i>Duty of tonnage</i> without the consent of Congress. No State shall lay any.....	1	10	3

E.

<i>Election</i> of President and Vice-President. Congress may determine the day for the....	2	1	3
Shall be the same throughout the United States. The day of the.....	2	1	3
<i>Elections</i> for Senators and Representatives. The legislatures of the States shall prescribe the times, places, and manner of holding.....	1	4	1
But Congress may, at any time, alter such regulations, except as to the places of choosing Senators	1	4	1
Returns and qualifications of its own members. Each house shall be the judge of the	1	5	1
<i>Electors</i> for members of the House of Representatives. Qualifications of.....	1	2	1
<i>Electors</i> for President and Vice-President. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress	2	1	2
But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.....	2	1	2
Congress may determine the time of choosing the electors, and the day on which they shall give their votes.....	2	1	3
Which day shall be the same throughout the United States.....	2	1	3
The electors shall meet in their respective States and vote, by ballot, for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves.....[Amendments.]	12	..	..
Shall name, in their ballots, the person voted for as President; and in distinct ballots the person voted for as Vice-President.....[Amendments.]	12	..	..
They shall make distinct lists of the persons voted for as President, and of persons voted for as Vice-President, which they shall sign and certify, and transmit, sealed, to the seat of government, directed to the President of the Senate. [Amendments.]	12	..	..
No person having taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterwards engaged in insurrection or rebellion against the United States, shall be an elector.....[Amendments.]	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments.]	14	3	..
<i>Emancipation</i> of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments.]	14	4	..
<i>Emit bills of credit.</i> No State shall.....	1	10	1
<i>Emolument</i> of any kind from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept any	1	9	8
<i>Enemies.</i> Treason shall consist in levying war against the United States, in adhering to, or giving aid and comfort to their.....	3	3	1
<i>Engagements</i> contracted before the adoption of this Constitution shall be valid. All debts and	6	..	1
<i>Enumeration</i> of the inhabitants shall be made within three years after the first meeting of Congress, and within every subsequent term of ten years thereafter.....	1	2	3
Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made.....	1	2	3
<i>Enumeration</i> in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The.....[Amendments.]	9	..	..
<i>Equal protection</i> of the laws. No State shall deny to any person within its jurisdiction the	14	1	..
<i>Equal suffrage</i> in the Senate. No State shall be deprived, without its consent, of its....	5	..	..
<i>Establishment</i> of this Constitution between the States ratifying the same. The ratification of nine States shall be sufficient for the.....	7	..	..
<i>Excessive bail</i> shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted	8	..	..
<i>Excises.</i> Congress shall have power to lay and collect taxes, duties, imposts, and.....	1	8	1
Shall be uniform throughout the United States. All duties, imposts, and.....	1	8	1

	Art.	Sec.	Cl
<i>Exclusive legislation</i> , in all cases, over such district as may become the seat of govern- ment. Congress shall exercise.....	1	8	15
Over all places purchased for the erection of forts, magazines, arsenals, dock- yards, and other needful buildings. Congress shall exercise.....	1	8	17
<i>Executive of a State</i> . The United States shall protect each State against invasion and domestic violence, on the application of the legislature or the.....	4	4	..
<i>Executive and judicial officers</i> of the United States, and of the several States, shall be bound by an oath to support the Constitution.....	6	..	2
<i>Executive departments</i> . On subjects relating to their duties, the President may require the written opinions of the principal officers in each of the.....	2	2	1
Congress may, by law, vest the appointment of inferior officers in the heads of....	2	2	2
<i>Executive power</i> shall be vested in a President of the United States of America. The....	2	1	1
<i>Expel a member</i> . Each house, with the concurrence of two-thirds, may.....	1	5	2
<i>Expenditures</i> of public money shall be published from time to time. A regular state- ment of the receipts and.....	1	9	7
<i>Exportations</i> from any State. No tax or duty shall be laid on.....	1	9	5
<i>Exports or imports</i> , except upon certain conditions. No State shall, without the consent of Congress, lay any duties on.....	1	10	2
Laid by any State, shall be for the use of the Treasury. The net produce of all duties on	1	10	2
Shall be subject to the revision and control of Congress. All laws of the States laying duties on.....	1	10	2
<i>Ex post facto law</i> shall be passed. No bill of attainder or.....	1	9	8
<i>Ex post facto law</i> , or law impairing the obligation of contracts. No State shall pass any bill of attainder.....	1	10	1
<i>Extraordinary occasions</i> . The President may convene both Houses, or either House of Congress, on	2	3	..

F.

<i>Faith</i> and credit in each State shall be given to the acts, records, and judicial proceed- ings of another State. Full	4	1	..
<i>Felony</i> , and breach of the peace. Members of Congress shall not be privileged from arrest for treason.....	1	6	1
<i>Felonies</i> committed on the high seas. Congress shall have power to define and punish piracies and	1	8	10
<i>Fines</i> . Excessive fines shall not be imposed.....[Amendments.]	8	..	..
<i>Foreign coin</i> . Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of.....	1	8	5
<i>Foreign nations</i> , among the States, and with the Indian tribes. Congress shall have power to regulate commerce with.....	1	8	3
<i>Foreign power</i> . No State shall, without the consent of Congress, enter into any compact or agreement with any.....	1	10	8
<i>Forfeiture</i> , except during the life of the person attainted. Attainder of treason shall not work	3	3	2
<i>Formation</i> of new States. Provisions relating to the.....	4	3	1
<i>Form of government</i> . The United States shall guarantee to every State in this Union a republican	4	4	..
And shall protect each of them against invasion; and on application of the legis- lature, or of the executive (when the legislature can not be convened), against domestic violence	4	4	..
<i>Forts</i> , magazines, arsenals, dockyards, and other needful buildings. Congress shall exer- cise exclusive authority over all places purchased for the erection of.....	1	8	17
<i>Freedom</i> of speech or the press. Congress shall make no law abridging the [Amendments.]	1	..	..
<i>Free State</i> , the right of the people to keep and bear arms shall not be infringed. A well- regulated militia being necessary to the security of a .....[Amendments.]	2	..	..
<i>Fugitives</i> from crime found in another State shall, on demand, be delivered up to the authorities of the State from which they may flee.....	4	2	2
<i>Fugitives</i> from service or labor in one State, escaping into another State, shall be deliv- ered up to the party to whom such service or labor may be due.....	4	2	3

G.

<i>General welfare</i> , and secure the blessings of liberty, etc. To promote the....[Preamble.]
<i>General welfare</i> . Congress shall have power to provide for the common defense and....	1	8	1
<i>Georgia</i> shall be entitled to three Representatives in the first Congress.....	1	2	3
<i>Gold and silver</i> coin a tender in payment of debts. No state shall make anything but... Good behavior. The judges of the Supreme and inferior courts shall hold their offices during	1	10	1
.....	3	1	..
<i>Government</i> . The United States shall guarantee to every State in this Union a repub- lican form of.....	4	4	..
And shall protect each of them against invasion, and on application of the legis- lature, or of the executive (when the legislature can not be convened), against domestic violence	4	4	..
<i>Grand jury</i> . No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a.....[Amendments.]	5	..	..
Except in cases arising in the land and naval forces, and in the militia when in actual service	5	..	..

	Art.	Sec.	Cl.
<i>Guarantee</i> to every State in this Union a republican form of government. The United States shall	4	4	..
And shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence	4	4	..

H.

<i>Habeas corpus</i> shall not be suspended unless in cases of rebellion or invasion. The writ of	1	9	2
<i>Heads of departments.</i> Congress may, by law, vest the appointment of inferior officers in the	2	2	2
On any subject relating to their duties, the President may require the written opinion of the principal officers in each of the executive departments.....	2	2	1
<i>High crimes and misdemeanors.</i> The President, Vice-President, and all civil officers shall be removed on impeachment for, and conviction of, treason, bribery, or other..	2	4	..
<i>House of Representatives.</i> Congress shall consist of a Senate and.....	1	1	..
Shall be composed of members chosen every second year.....	1	2	1
Qualifications of electors for members of the.....	1	2	1
No person shall be a member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States.....	1	2	2
The executives of the several States shall issue writs of election to fill vacancies in the	1	2	4
Shall choose their Speaker and other officers.....	1	2	5
Shall have the sole power of impeachment.	1	2	5
Shall be the judge of the elections, returns, and qualifications of its own members.	1	5	1
A majority shall constitute a quorum to do business.....	1	5	1
Less than a majority may adjourn from day to day, and compel the attendance of absent members	1	5	1
May determine its own rules of proceedings.....	1	5	2
May punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.....	1	5	2
Shall keep a journal of its proceedings.....	1	5	3
Shall not adjourn for more than three days during the session of Congress without the consent of the Senate.....	1	5	4
Members shall not be questioned for any speech or debate in either House, or in any other place	1	6	1
No person holding any office under the United States shall, while holding such office, be a member of the.....	1	6	2
No person, while a member of either House, shall be appointed to an office which shall have been created, or the emoluments increased, during his membership....	1	6	2
All bills for raising revenue shall originate in the.....	1	7	1
The votes for President and Vice-President shall be counted in the presence of the Senate and .....[Amendments.]	12	..	..
If no person have a majority of electoral votes, then from the three highest on the list the House of Representatives shall immediately, by ballot, choose a President	12	..	..
They shall vote by States, each State counting one vote.....[Amendments.]	12	..	..
A quorum shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to the choice of a President. [Amendments.]	12	..	..
No person having, as a legislative, executive, or judicial officer of the United States, or of any State, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a member of the	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments.]	14	3	..

I.

<i>Imminent danger</i> as will not admit of delay. No State shall, without the consent of Congress, engage in war, unless actually invaded, or in such.....	1	10	3
<i>Immunities.</i> Members of Congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going and returning from the same.....	1	6	1
No soldier shall be quartered in any house, without the consent of the owner, in time of peace	3	..	..
No person shall be twice put in jeopardy of life or limb for the same offense. [Amendments.]	5	..	..
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State in which they reside	14	1	..
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.....[Amendments.]	14	1	.
Nor shall any State deprive any person of life, liberty, or property, without due process of law	14	1	..
Nor deny to any person within its jurisdiction the equal protection of the law. [Amendments.]	14	1	..
<i>Impeachment.</i> The President may grant reprieves and pardons except in cases of.....	2	2	1
The House of Representatives shall have the sole power of.....	1	2	5
<i>Impeachment</i> for, and conviction of, treason, bribery, and other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed upon	2	4	..

	Art.	Sec.	Cl.
<i>Impeachments.</i> The Senate shall have the sole power to try all.....	1	3	6
The Senate shall be on oath, or affirmation, when sitting for the trial of.....	1	3	6
When the President of the United States is tried, the Chief Justice shall preside..	1	3	6
No person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
Judgment shall not extend beyond removal from office, and disqualification to hold office	1	3	7
But the party convicted shall be liable to indictment and punishment according to law	1	3	7
<i>Importation</i> of slaves prior to 1808 shall not be prohibited by the Congress.....	1	9	1
But a tax or duty of ten dollars for each person may be imposed on such.....	1	9	1
<i>Imports or exports</i> , except what may be absolutely necessary for executing its inspection laws. No state shall, without the consent of Congress, lay any imposts or duties on	1	10	2
<i>Imports or exports</i> laid by any State shall be for the use of the Treasury. The net produce of all duties on.....	1	10	2
<i>Imports or exports</i> shall be subject to the revision and control of Congress. All laws of States laying duties on.....	1	10	2
<i>Imposts and excises.</i> Congress shall have power to lay and collect taxes, duties.....	1	8	1
Shall be uniform throughout the United States. All taxes, duties.....	1	8	1
<i>Inability</i> of the President, the powers and duties of his office shall devolve on the Vice-President. In case of the death, resignation, or.....	2	1	5
<i>Inability</i> of the President or Vice-President. Congress may provide, by law, for the case of the removal, death, resignation, or.....	2	1	5
<i>Indian tribes.</i> Congress shall have power to regulate commerce with the.....	1	8	3
<i>Indictment</i> or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime, unless on.....[Amendments.]	5	..	..
Except in cases arising in the land and naval forces, and in the militia when in actual service	5	..	..
<i>Indictment</i> , trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to.....	1	3	7
<i>Infamous crime</i> , unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or.....[Amendments.]	5	..	..
<i>Inferior courts.</i> Congress shall have power to constitute tribunals inferior to the Supreme Court	1	8	9
<i>Inferior courts</i> as Congress may establish. The judicial power of the United States shall be vested in one Supreme Court, and such.....	3	1	..
The judges of both the Supreme and inferior courts shall hold their offices during good behavior	3	1	..
Their compensation shall not be diminished during their continuance in office.....	3	1	..
<i>Inferior officers</i> in the courts of law, in the President alone, or in the heads of departments. Congress, if they think proper, may, by law, vest the appointment of..	2	2	2
<i>Inhabitant of the State</i> for which he shall be chosen. No person shall be a Senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an.....	1	3	3
<i>Insurrection or rebellion</i> against the United States. No person shall be a Senator or Representative in Congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who, having taken an oath as a legislative, executive, or judicial officer of the United States, or of a State, afterwards engaged in	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such disabilities	14	3	..
<i>Insurrection or rebellion</i> against the United States. Debts declared illegal and void which were contracted in aid of.....[Amendments.]	14	4	..
<i>Insurrections</i> and repel invasions. Congress shall provide for calling forth the militia to suppress	1	8	15
<i>Invasion.</i> No state shall, without the consent of Congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay.....	1	10	3
The writ of <i>habeas corpus</i> shall not be suspended unless in case of rebellion or....	1	9	2
<i>Invasion</i> and domestic violence. The United States shall protect each State against....	4	4	..
<i>Invasions.</i> Congress shall provide for calling forth the militia to suppress insurrections and repel	1	8	15
<i>Inventors and authors</i> in their inventions and writings. Congress may pass laws to secure, for limited times, exclusive rights to.....	1	8	8
<i>Involuntary servitude</i> , except as a punishment for crime, abolished in the United States. Slavery and	13	1	..

J.

<i>Jeopardy</i> of life and limb for the same offense. No person shall be twice put in. [Amendments.]	5
<i>Journal</i> of its proceedings. Each House shall keep a.....	1	5	3
<i>Judges</i> in every State shall be bound by the Constitution, the laws and treaties of the United States, which shall be the supreme law of the land.....	6	..	2
<i>Judges</i> of the Supreme and inferior courts shall hold their offices during good behavior. Their compensation shall not be diminished during their continuance in office.....	3	1	..
.....	3	1	..
<i>Judgment</i> in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under the United States	1	3	7
But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.....	1	3	7

	Art.	Sec.	Cl.
<i>Judicial power of the United States.</i> Congress shall have power to constitute tribunals inferior to the Supreme Court.....	1	8	9
The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish..	3	1	..
The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	..
Their compensation shall not be diminished during their continuance in office.....	3	1	..
It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States.....	3	2	1
To all cases affecting ambassadors, or public ministers, and consuls.....	3	2	1
To all cases of admiralty and maritime jurisdiction.....	3	2	1
To controversies to which the United States shall be a party.....	3	2	1
To controversies between two or more States.....	3	2	1
To controversies between a State and citizens of another State.....	3	2	1
To controversies between citizens of different States.....	3	2	1
To citizens of the same State claiming lands under grants of different States.....	3	2	1
To controversies between a State or its citizens and foreign states, citizens, or subjects	3	2	1
In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction	3	2	2
In all other cases before mentioned, it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make	3	2	2
The trial of all crimes, except in cases of impeachment, shall be by jury.....	3	2	3
The trial shall be held in the State where the crimes shall have been committed....	3	2	3
But when not committed in a State, the trial shall be at such place or places as Congress may, by law, have directed.....	3	2	3
The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state. [Amendments.]	11	..	..
<i>Judicial proceedings</i> of every other State. Full faith and credit shall be given in each State to the acts, records, and.....	4	1	..
Congress shall prescribe the manner of proving such acts, records, and proceedings.	4	1	..
<i>Judicial</i> and executive officers of the United States, and of the several States, shall be bound by an oath to support the Constitution.....	6	..	3
<i>Judiciary.</i> The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State may be a party	3	2	2
The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as Congress may make.....	3	2	2
<i>Junction</i> of two or more States, or parts of States, without the consent of the legislatures and of Congress. No State shall be formed by the.....	4	3	1
<i>Jurisdiction</i> of another State. No new State shall, without the consent of Congress, be formed or erected within the.....	4	3	1
<i>Jurisdiction</i> , both as to law and fact, with such exceptions and under such regulations as Congress may make. The Supreme Court shall have appellate.....	3	2	2
<i>Jurisdiction.</i> In all cases affecting ambassadors and other public ministers and consuls, and in cases where a State is a party, the Supreme Court shall have original....	3	2	2
<i>Jury.</i> The trial of all crimes, except in cases of impeachment, shall be by.....	3	2	3
In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments.]	6	..	..
All suits at common law, where the value exceeds twenty dollars, shall be tried by	7	..	..
Where a fact has been tried by a jury, it shall not be re-examined except by the rules of the common law.....[Amendments.]	7	..	..
<i>Just compensation.</i> Private property shall not be taken for public use without [Amendments.]	5	..	..
<i>Justice</i> , insure domestic tranquillity, etc. To establish.....[Preamble.]	..	..	..

L.

<i>Labor</i> , in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or.....	4	2	3
<i>Land</i> and naval forces. Congress shall make rules for the government and regulation of the	1	8	14
<i>Law</i> and fact, with exceptions, and under regulations to be made by Congress. The Supreme Court shall have appellate jurisdiction as to.....	3	2	2
<i>Law</i> of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States, shall be the supreme.....	6	..	2
The judges in every State shall be bound thereby.....	6	..	2
<i>Law</i> of nations. Congress shall provide for punishing offenses against the.....	1	8	10
<i>Laws.</i> Congress shall provide for calling forth the militia to suppress insurrection, repel invasion, and to execute the.....	1	8	15
<i>Laws and treaties of the United States.</i> The judicial power shall extend to all cases in law and equity arising under the Constitution, or the.....	3	2	1
<i>Laws</i> necessary to carry into execution the powers vested in the government, or in any department or officer of the United States. Congress shall make all.....	1	8	18
<i>Legal tender</i> in payment of debts. No state shall make anything but gold and silver coin a	1	10	1

<i>Legislation</i> in all cases over such district as may become the seat of government. Congress shall exercise exclusive.....	1	8	17
Over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. Congress shall exercise exclusive.....	1	8	17
<i>Legislation.</i> Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.....	1	8	18
Congress shall have power to enforce Article XIII, prohibiting slavery, by appropriate .....[Amendments.]	13	2	..
Congress shall have power to enforce the Fourteenth Amendment by appropriate. [Amendments.]	14	5	.
Congress shall have power to enforce the Fifteenth Amendment by appropriate. [Amendments.]	15	2	.
<i>Legislative</i> powers herein granted shall be vested in Congress. All.....	1	1	..
<i>Legislature, or the Executive</i> (when the legislature cannot be convened). The United States shall protect each State against invasion and domestic violence, on the application of the	4	4	..
<i>Legislatures</i> of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the application of the.....	5	..	..
<i>Letters</i> of marque and reprisal. Congress shall have power to grant.....	1	8	11
No State shall grant.....	1	10	1
<i>Liberty</i> to ourselves and our posterity, etc. To secure the blessings of.....[Preamble.]	..	..	..
<i>Life, liberty, and property</i> without due process of law. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of [Amendments.]	5	..	..
No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of.....[Amendments.]	14	1	..
<i>Life</i> or limb for the same offense. No person shall be twice put in jeopardy of [Amendments.]	5	..	..
<i>Loss</i> or emancipation of any slave shall be held illegal and void. Claims for the [Amendments.]	14	4	..

M.

<i>Magazines</i> , arsenals, dockyards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of.....	1	8	17
<i>Majority</i> of each House shall constitute a quorum to do business. A.....	1	5	1
But a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members.....	1	5	1
<i>Majority</i> of all the States shall be necessary to a choice. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from two-thirds of the States; but a.....[Amendments.]	12	..	..
When the choice of a Vice-President shall devolve on the Senate, a quorum shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.....[Amendments.]	12	..	..
<i>Maritime jurisdiction.</i> The judicial power shall extend to all cases of admiralty and.....	3	2	1
<i>Marque</i> and reprisal. Congress shall have power to grant letters of.....	1	8	11
No state shall grant any letters of.....	1	10	1
<i>Maryland</i> entitled to six Representatives in the first Congress.....	1	2	3
<i>Massachusetts</i> entitled to eight Representatives in the first Congress.....	1	2	3
<i>Measures.</i> Congress shall fix the standard of weights and.....	1	8	5
<i>Meeting of Congress.</i> The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day	1	4	2
<i>Members</i> of Congress, and of State legislatures, shall be bound by oath or affirmation to support the Constitution	6	..	3
<i>Militia</i> to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the.....	1	8	15
Congress shall provide for organizing, arming, and disciplining the.....	1	8	16
Congress shall provide for governing such part of them as may be employed by the United States	1	8	16
Reserving to the States the appointment of the officers, and the right to train the militia according to the discipline prescribed by Congress.....	1	8	16
A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.....[Amendments.]	2	..	..
<i>Misdemeanors.</i> The President, Vice-President, and all civil officers shall be removed on impeachment for, and conviction of, treason, bribery, or other high crimes and..	2	4	..
<i>Money</i> on the credit of the United States. Congress shall have power to borrow.....	1	8	2
Regulate the value thereof, and of foreign coin. Congress shall have power to coin. Shall be drawn from the Treasury but in consequence of appropriations made by law. No	1	8	5
Shall be published from time to time. A regular statement and account of receipts and expenditures of public.....	1	9	7
For raising and supporting armies. No appropriation of money shall be for a longer term than two years.....	1	9	7
	1	8	12

N.

	Art.	Sec.	Cl.
<i>Nations.</i> Congress shall have power to regulate commerce with foreign.....	1	8	3
Congress shall provide for punishing offenses against the law of.....	1	8	10
<i>Natural born citizen</i> , or a citizen at the adoption of the Constitution, shall be eligible to the office of President. No person except a.....	2	1	4
<i>Naturalization.</i> Congress shall have power to establish a uniform rule of.....	1	8	4
<i>Naturalized</i> in the United States, and subject to their jurisdiction, shall be citizens of the United States, and of the States in which they reside. All persons born, or. [Amendments.]	14	1	..
<i>Naval forces.</i> Congress shall make rules and regulations for the government and regulation of the land and.....	1	8	14
<i>Navy.</i> Congress shall have power to provide and maintain a.....	1	8	13
<i>New Hampshire</i> entitled to three Representatives in the first Congress.....	1	2	3
<i>New Jersey</i> entitled to four Representatives in the first Congress.....	1	2	3
<i>New States</i> may be admitted by Congress into this Union.....	4	3	1
But no new State shall be formed within the jurisdiction of another State without the consent of Congress.....	4	3	1
Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures and of Congress.....	4	3	1
<i>New York</i> entitled to six Representatives in the first Congress.....	1	2	3
<i>Nobility</i> shall be granted by the United States. No title of.....	1	9	8
No state shall grant any title of.....	1	10	1
<i>Nominations for office</i> by the President. The President shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public officers	2	2	2
He may grant commissions to fill vacancies that happen in the recess of the Senate, which shall expire at the end of their next session.....	2	2	3
<i>North Carolina</i> entitled to five Representatives in the first Congress.....	1	2	3
<i>Number of electors</i> for President and Vice-President in each State shall be equal to the number of Senators and Representatives to which such State may be entitled in Congress	2	1	2

O.

<i>Oath of office</i> of the President of the United States. Form of the.....	2	1	7
<i>Oath or affirmation.</i> No warrants shall be issued but upon probable cause supported by. [Amendments.]	4	..	..
<i>Oath or affirmation</i> to support the Constitution. Senators and Representatives, members of State legislatures, executive and judicial officers of the United States and of the several States, shall be bound by.....	6	..	3
But no religious test shall ever be required as a qualification for office.....	6	..	3
The Senators, when sitting to try impeachment, shall be on.....	1	3	6
<i>Objections.</i> If he shall not approve it, the President shall return the bill to the House in which it originated with his.....	1	7	2
<i>Obligation of contracts.</i> No State shall pass any <i>ex post facto</i> law, or law impairing the..	1	10	1
<i>Obligations</i> incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or.....[Amendments.]	14	4	..
<i>Offense.</i> No person shall be twice put in jeopardy of life or limb for the same [Amendments.]	5	..	..
<i>Offenses</i> against the law of nations. Congress shall provide for punishing.....	1	8	10
Against the United States, except in cases of impeachment. The President may grant reprieves or pardons for.....	2	2	1
<i>Office</i> under the United States. No person shall be a member of either House while holding any civil	1	6	2
No Senator or Representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected.....	1	6	2
Or title of any kind from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept of any present, emolument	1	9	8
<i>Office</i> of President, in case of his removal, death, resignation, or inability, shall devolve on the Vice-President. The powers and duties of the.....	2	1	5
During the term of four years. The President and Vice-President shall hold.....	2	1	1
Of trust or profit under the United States shall be an elector for President and Vice-President. No person holding an.....	2	1	2
Civil or military under the United States, or any State, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterward engaged in insurrection or rebellion. No person shall be a Senator, Representative, or Presidential elector, or hold any.....[Amendments.]	14	3	..
<i>Officers</i> in the President alone, in the courts of law, or in the heads of departments. Congress may vest the appointment of inferior.....	2	2	2
Of the United States shall be removed on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The President, Vice-President, and all civil	2	4	..
The House of Representatives shall choose their Speaker and other.....	1	2	5
The Senate, in the absence of the Vice-President, shall choose a President <i>pro tempore</i> , and also their other.....	1	3	5
<i>Offices</i> becoming vacant in the recess of the Senate may be filled by the President, the commissions to expire at the end of the next session.....	2	2	3

	Art.	Sec.	Cl.
<i>One-fifth</i> of the members present, be entered on the journal of each House. The yeas and nays shall, at the desire of.....	1	5	3
<i>Opinion</i> of the principal officers in each of the Executive Departments on any subject relating to their duties. The President may require the written.....	2	2	1
<i>Order</i> resolution, or vote (except on a question of adjournment) requiring the concurrence of the two Houses, shall be presented to the President. Every.....	1	7	3
<i>Original jurisdiction</i> , in all cases affecting ambassadors, other public ministers, and consuls, and in which a State may be a party. The Supreme Court shall have....	3	2	2
<i>Overt act</i> , or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the.....	3	3	1

P.

<i>Pardons</i> , except in cases of impeachment. The President may grant reprieves and.....	2	2	1
<i>Patent rights</i> to inventors. Congress may pass laws for securing.....	1	8	8
<i>Peace</i> . Members of Congress shall not be privileged from arrest for treason, felony, and breach of the	1	6	1
No State shall, without the consent of Congress, keep troops or ships of war in time of	1	10	3
No soldier shall be quartered in any house, without the consent of the owner, in time of .....[Amendments.]	3	..	..
<i>Pensions and bounties</i> shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for .....[Amendments.]	14	4	..
<i>Pennsylvania</i> entitled to eight Representatives in the first Congress.....	1	2	3
<i>People</i> , peaceably to assemble and petition for redress of grievances, shall not be abridged by Congress. The right of the.....[Amendments.]	1	..	..
To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the.....[Amendments.]	2	..	..
To be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated. The right of the....[Amendments.]	4	..	..
<i>People</i> . The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the.....[Amendments.]	9	..	..
Powers not delegated to the United States, nor prohibited to the States, are reserved to the States or to the.....[Amendments.]	10	..	..
<i>Perfect Union, etc.</i> To establish a more.....[Preamble.]	..	..	..
<i>Persons</i> , houses, papers, and effects against unreasonable searches and seizures. The people shall be secured in their.....[Amendments.]	4	..	..
<i>Persons</i> , as any State may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such.....	1	9	1
But a tax or duty of ten dollars shall be imposed on the importation of each of such	1	9	1
<i>Petition</i> for the redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to.....[Amendments.]	1	..	..
<i>Piracies and felonies</i> committed on the high seas. Congress shall define and punish.....	1	8	10
* <i>Place</i> than that in which the two Houses shall be sitting. Neither house, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other.....	1	5	4
<i>Places of choosing Senators</i> . Congress may, by law, make or alter regulations for the election of Senators and Representatives, except as to the.....	1	4	1
<i>Ports</i> of one State over those of another. Preference shall not be given by any regulation of commerce or revenue to the.....	1	9	6
Vessels clearing from the ports of one State shall not pay duties in another.....	1	9	6
<i>Post-offices and post roads</i> . Congress shall establish.....	1	8	7
<i>Powers</i> herein granted shall be vested in Congress. All legislative.....	1	1	..
<i>Powers</i> vested by the Constitution in the Government or in any department or officer of the United States. Congress shall make all laws necessary to carry into execution the	1	8	18
<i>Powers</i> and duties of the office shall devolve on the Vice-President, on the removal, death, resignation, or inability of the President. The.....	2	1	5
<i>Powers</i> not delegated to the United States, nor prohibited to the States, are reserved to the States and to the people.....[Amendments.]	10	..	..
The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people.....[Amendments.]	9	..	..
<i>Preference</i> , by any regulation of commerce or revenue, shall not be given to the ports of one State over those of another.....	1	9	6
<i>Prejudice</i> any claims of the United States, or of any particular State, in the territory or property of the United States. Nothing in this Constitution shall.....	4	3	2
<i>Present</i> , emolument, office, or title of any kind whatever, from any king, prince, or foreign State. No person holding any office under the United States shall, without the consent of Congress, accept any.....	1	9	8
<i>Presentment</i> or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service. No person shall be held to answer for a capital or otherwise infamous crime unless on a [Amendments.]	5	..	..

	Art.	Sec.	Cl:
<i>President of the United States.</i> The Senate shall choose a President <i>pro tempore</i> when the Vice-President shall exercise the office of.....	1	3	5
The Chief Justice shall preside upon the trial of the.....	1	3	6
Shall approve and sign all bills passed by Congress before they shall become laws..	1	7	2
Shall return to the House in which it originated, with his objections, any bill which which he shall not approve.....	1	7	2
If not returned within ten days (Sundays excepted), it shall become a law, unless Congress shall adjourn before the expiration of that time.....	1	7	2
Every order, resolution, or vote which requires the concurrence of both Houses, except on a question of adjournment, shall be presented to the.....	1	7	3
If disapproved by him, shall be returned and proceeded on as in the case of a bill..	1	7	3
The executive power shall be vested in a.....	2	1	1
He shall hold his office during the term of four years.....	2	1	1
In case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of his office, the Vice-President shall perform the duties of	2	1	5
Congress may declare, by law, in the case of the removal, death, resignation, or inability of the President, what officer shall act as.....	2	1	5
The President shall receive a compensation which shall not be increased nor diminished during his term, nor shall he receive any other emolument from the United States	2	1	6
Before he enters upon the execution of his office he shall take an oath of office....	2	1	7
Shall be commander-in-chief of the Army and Navy, and of the militia of the States when called into actual service.....	2	2	1
He may require the opinion, in writing, of the principal officer in each of the Executive Departments	2	2	1
He may grant reprieves or pardons for offenses, except in cases of impeachment....	2	2	1
He may make treaties by and with the advice and consent of the Senate, two-thirds of the Senators present concurring.....	2	2	2
He may appoint, by and with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments may be authorized by law and not herein provided for	2	2	2
Congress may vest the appointment of inferior officers in the.....	2	2	2
He may fill up all vacancies that may happen in the recess of the Senate by commissions which shall expire at the end of their next session.....	2	2	3
He shall give information to Congress of the state of the Union, and recommend measures	2	3	..
On extraordinary occasions he may convene both Houses or either House of Congress	2	3	..
In case of disagreement between the two Houses as to the time of adjournment, he may adjourn them to such time as he may think proper.....	2	3	..
He shall receive ambassadors and other public ministers.....	2	3	..
He shall take care that the laws be faithfully executed.....	2	3	..
He shall commission all the officers of the United States.....	2	3	..
On impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors, shall be removed from office. The.....	2	4	..
No person except a natural-born citizen, or a citizen of the United States at the adoption of the Constitution, shall be eligible to the office of.....	2	1	4
No person who shall not have attained the age of thirty-five years, and been fourteen years a citizen of the United States, shall be eligible to the office of..	2	1	4
<i>President and Vice-President. Manner of choosing.</i> Each State, by its legislature, shall appoint a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress.....	2	1	2
No Senator or Representative, or person holding an office of trust or profit under the United States, shall be an elector.....	2	1	2
Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States	2	1	3
The electors shall meet in their respective States and vote, by ballot, for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves	12	..	..
They shall name in distinct ballots the person voted for as President and the person voted for as Vice-President	12	..	..
They shall make distinct lists of the persons voted for as President and as Vice-President, which they shall sign and certify and transmit sealed to the President of the Senate at the seat of government.....	12	..	..
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. [Amendments.]	12	..	..
The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed. [Amendments.]	12	..	..
If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. [Amendments.]	12	..	..
In choosing the President, the votes shall be taken by States, the representation from each State having one vote	12	..	..
A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments.]	12	..	..
But if no choice shall be made before the 4th of March next, following, then the Vice-President shall act as President, as in the case of the death or disability of the President	12	..	..

	Art.	Sec.	Cl.
<i>President of the Senate</i> , but shall have no vote unless the Senate be equally divided. The Vice-President shall be	1	3	4
<i>President pro tempore</i> . In the absence of the Vice-President, the Senate shall choose a..	1	3	5
When the Vice-President shall exercise the office of President of the United States, the Senate shall choose a.....	1	3	5
<i>Press</i> . Congress shall pass no law abridging the freedom of speech or of the [Amendments.]	1	..	..
<i>Previous condition</i> of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or	15	1	..
<i>Private property</i> shall not be taken for public use without just compensation. [Amendments.]	5	..	..
<i>Privilege</i> . Senators and Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same	1	6	1
They shall not be questioned for any speech or debate in either House in any other place	1	6	1
<i>Privileges and immunities of citizens of the United States</i> . The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States	4	2	1
No soldier shall be quartered in any house without the consent of the owner in time of peace	3	..	..
No person shall be twice put in jeopardy of life and limb for the same offense. [Amendments.]	5	..	..
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State in which they reside	14	1	..
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.....	14	1	..
No State shall deprive any person of life, liberty, or property, without due process of law	14	1	..
Nor deny any person within its jurisdiction the equal protection of its laws. [Amendments.]	14	1	..
<i>Prizes</i> captured on land and water. Congress shall make rules concerning.....	1	8	11
<i>Probable cause</i> . The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. And no warrant shall issue for such but upon.....	4	..	..
<i>Process of law</i> . No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due. [Amendments.]	5	..	..
No State shall deprive any person of life, liberty, or property, without due. [Amendments.]	14	1	..
<i>Process</i> for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have	6	..	..
<i>Progress</i> of science and useful arts. Congress shall have power to promote the.....	1	8	8
<i>Property</i> of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or.....	4	3	2
<i>Property</i> , without due process of law. No person shall be compelled, in any criminal case, to be a witness against himself;- nor shall he be deprived of his life, liberty, or	5	..	..
No State shall abridge the privileges or immunities of citizens of the United States; nor deprive any person of his life, liberty, or.....	14	1	..
<i>Prosecutions</i> . The accused shall have a speedy and public trial in all criminal. [Amendments.]	6	..	..
He shall be tried by a jury in the State or district where the crime was committed. [Amendments.]	6	..	..
He shall be informed of the nature and cause of the accusation.....	6	..	..
He shall be confronted with the witnesses against him.....	6	..	..
He shall have compulsory process for obtaining witnesses.....	6	..	..
He shall have counsel for his defense.....	6	..	..
<i>Protection</i> of the laws. No State shall deny to any person within its jurisdiction the equal	14	1	..
<i>Public debt</i> of the United States incurred in suppressing insurrection or rebellion shall not be questioned. The validity of the.....	14	4	..
<i>Public safety</i> may require it. The writ of <i>habeas corpus</i> shall not be suspended, unless when in cases of rebellion or invasion the.....	1	9	2
<i>Public trial</i> by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments.]	6	..	..
<i>Public use</i> . Private property shall not be taken for, without just compensation. [Amendments.]	5	..	..
<i>Punishment</i> according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and	1	3	7
<i>Punishments</i> inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual	8	..	..

Q.

	Art.	Sec.	Cl.
✓ <i>Qualification for Office.</i> No religious test shall ever be required as a.....	6	..	3
<i>Qualifications</i> of electors of members of the House of Representatives shall be the same as electors for the most numerous branch of the State legislature.....	1	2	1
<i>Qualifications</i> of members of the House of Representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the State in which chosen	1	2	2
Of Senators. They shall be thirty years of age, nine years a citizen of the United States, and an inhabitant of the State in which chosen.....	1	3	3
Of its own members. Each House shall be the judge of the election, returns, and.	1	5	1
Of the President. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President.....	2	1	4
Neither shall any person be eligible to the office of President who shall not have attained the age of thirty-five years and been fourteen years a resident within the United States	2	1	4
<i>Qualification, etc.</i> Of the Vice-President. No person constitutionally ineligible to the office of President shall be eligible to that of Vice-President.....[Amendments.]	12	..	..
<i>Quartered</i> in any house without the consent of the owner in time of peace. No soldier shall be	3	..	..
[Amendments.]			
<i>Quorum</i> to do business. A majority of each House shall constitute a.....	1	5	1
But a smaller number than a quorum may adjourn from day to day, and may be authorized to compel the attendance of absent members.....	1	5	1
Of the House of Representatives for choosing a President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice.....[Amendments.]	12	..	..
<i>Quorum</i> to elect a Vice-President by the Senate. Two-thirds of the whole number of Senators shall be a.....[Amendments.]	12	..	..
A majority of the whole number shall be necessary to a choice....[Amendments.]	12	..	..

R.

<i>Race</i> , color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of	15	1	..
[Amendments.]			
<i>Ratification</i> of amendments to the Constitution shall be by the Legislatures of three-fourths of the several States, or by conventions in three-fourths of the States, accordingly as Congress may propose.....	5	..	..
<i>Ratification</i> of the conventions of nine States shall be sufficient to establish the Constitution between the States so ratifying the same.....	7	..	..
<i>Ratio</i> of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand.....	1	2	3
<i>Ratio</i> of representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.....[Amendments.]	14	2	..
But when the right to vote for Presidential electors or members of Congress, or the legislative, executive, and judicial officers of the State, except for engaging in rebellion or other crime, shall be denied or abridged by a State, the basis of representation shall be reduced therein in the proportion of such denial or abridgement of the right to vote.....[Amendments.]	14	2	..
<i>Rebellion</i> against the United States. Persons who, while holding certain Federal and State offices, took an oath to support the Constitution, afterward engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments.]	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments.]	14	3	..
Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned	14	4	..
[Amendments.]			
All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments.]	14	4	..
<i>Rebellion</i> or invasion. The writ of <i>habeas corpus</i> shall not be suspended except when the public safety may require it in cases of.....	1	9	2
<i>Receipts</i> and expenditures of all public money shall be published from time to time. A regular statement of	1	9	7
<i>Recess of the Senate.</i> The President may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the.....	2	2	3
<i>Reconsideration</i> of a bill returned by the President with his objections. Proceedings to be had upon the.....	1	7	2
<i>Records</i> , and judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts.....	4	1	..
Congress shall prescribe the manner of proving such acts, records, and proceedings.	4	1	..
<i>Redress of grievances.</i> Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the.....[Amendments.]	1	..	..
<i>Regulations</i> , except as to the places of choosing Senators. The time, places, and manner of holding elections for Senators and Representatives shall be prescribed by the legislatures of the States, but Congress may at any time, by law, make or alter such	1	4	1

	Art.	Sec.	Cl.
Regulations of commerce or revenue. Preference to the ports of one State over those of another shall not be given by any.....	1	9	6
Religion or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of .....[Amendments.]	1	..	..
Religious test shall ever be required as a qualification for any office or public trust under the United States. No.....	6	..	3
Removal of the President from office, the same shall devolve on the Vice-President. In case of the	2	1	5
Representation. No State, without its consent, shall be deprived of its equal suffrage in the Senate	5	..	..
Representation and direct taxation, how apportioned among the several States. [This provision is changed by the Fourteenth Amendment, section 2.....	1	2	3
Representation until the first enumeration under the Constitution not to exceed one for every thirty thousand. The ratio of.....	1	2	3
Representation in any State. The executive thereof shall issue writs of election to fill vacancies in the	1	2	4
Representation among the several States shall be according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The ratio of .....[Amendments.]	14	2	..
But where the right to vote in certain Federal and State elections is abridged for any cause other than rebellion or other crime, the basis of representation shall be reduced .....[Amendments.]	14	2	..
Representatives. Congress shall consist of a Senate and House of.....	1	1	..
Qualification of electors of members of the House of.....	1	2	1
No person shall be a Representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the State in which he shall be chosen.....	1	2	2
And direct taxes, how apportioned among the several States. [Amended by Fourteenth Amendment, section 2].....	1	2	3
Shall choose their Speaker and other officers. The House of.....	1	2	5
Shall have the sole power of impeachment. The House of.....	1	2	5
Executives of the States shall issue writs of election to fill vacancies in the House of	1	2	4
The times, places, and manner of choosing Representatives shall be prescribed by the legislatures of the States.....	1	4	1
But Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators	1	4	1
And Senators shall receive a compensation, to be ascertained by law.....	1	6	1
Shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the attendance at the session of the House, and in going to and returning from the same.....	1	6	1
Shall not be questioned in any other place for any speech or debate. Members of the House of	1	6	1
No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term	1	6	2
No person holding any office under the United States shall, while holding such office, be a member of the House of.....	1	6	2
All bills for raising revenue shall originate in the House of.....	1	7	1
No Senator or Representative shall be an elector for President or Vice-President..	2	1	2
Representatives shall be bound by an oath or affirmation to support the Constitution of the United States. The Senators and	6	..	3
Representatives among the several States. Provisions relative to the apportionment of. [Amendments.]	14	2	..
Representatives and Senators. Prescribing certain disqualifications for office as. [Amendments.]	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such disqualification .....[Amendments.]	14	3	..
Reprieves and pardons, except in cases of impeachment. The President may grant.....	2	2	1
Reprisal. Congress shall have power to grant letters of marque and.....	1	8	11
No State shall grant any letters of marque and.....	1	10	1
Republican form of government. The United States shall guarantee to every State in this Union a	4	4	..
And shall protect each of them against invasion; and on the application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence.....	4	4	..
Reserved rights of the States and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people .....[Amendments.]	9	..	..
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. [Amendments.]	10	..	..
Resignation, or inability of the President, the duties and powers of his office shall devolve on the Vice-President. In case of the death.....	2	1	5
Resignation, or inability of the President. Congress may, by law, provide for the case of the removal, death	2	1	5
Resolution, or vote (except on a question of adjournment) requiring the concurrence of the two Houses shall, before it becomes a law, be presented to the President. Every order	1	7	3
Revenue shall originate in the House of Representatives. All bills for raising.....	1	7	1

	Art.	Sec.	Cl.
<i>Revenue.</i> Preference shall not be given to the ports of one State over those of another by any regulations of commerce or	1	9	6
<i>Rhode Island</i> entitled to one Representative in the first Congress.....	1	2	3
<i>Right of petition.</i> Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments.]	1	..	..
<i>Right to keep and bear arms.</i> A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments.]	2	..	..
<i>Rights</i> in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain.....[Amendments.]	9	..	..
<i>Rights</i> not delegated to the United States, nor prohibited to the States, are reserved to the States, or to the people.....[Amendments.]	10	..	..
<i>Rules</i> of its proceedings. Each House may determine the.....	1	5	2
<i>Rules and regulations</i> respecting the territory or other property of the United States. Congress shall dispose of and make all needful.....	4	3	2
<i>Rules of the common law.</i> All suits involving over twenty dollars shall be tried by jury according to the.....[Amendments.]	7	..	..
No fact tried by a jury shall be re-examined except according to the [Amendments.]	7	..	..

S.

<i>Science and the useful arts</i> , by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of	1	8	8
<i>Searches and seizures</i> shall not be violated. The right of the people to be secure against unreasonable	4	..	..
And no warrants shall be issued but upon probable cause, on oath or affirmation, describing the place to be searched, and the persons or things to be seized. [Amendments.]	4	..	..
<i>Seat of Government.</i> Congress shall exercise exclusive legislation in all cases over such district as may become the.....	1	8	17
<i>Securities</i> and current coin of the United States. Congress shall provide for punishing the counterfeiting of the	1	8	6
<i>Security of a free State</i> , the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the.....[Amendments.]	2	..	..
<i>Senate and House of Representatives.</i> The Congress of the United States shall consist of a	1	1	..
<i>Senate of the United States.</i> The Senate shall be composed of two Senators from each State, chosen by the legislature for six years.....	1	3	1
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
The Vice-President shall be President of the Senate, but shall have no vote unless the Senate be equally divided	1	3	4
The Senate shall choose their other officers, and also a President <i>pro tempore</i> in the absence of the Vice-President, or when he shall exercise the office of President.	1	3	5
The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation.....	1	3	6
When the President of the United States is tried, the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present	1	3	6
It shall be the judge of the elections, returns, and qualifications of its own members.	1	5	1
A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members	1	5	1
It may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds expel a member.....	1	5	2
It shall keep a journal of its proceedings, and from time to time publish the same, except such parts as may, in their judgment, require secrecy.....	1	5	3
It shall not adjourn for more than three days during a session, without the consent of the other House.....	1	5	4
It may propose amendments to bills for raising revenue, but such bills shall originate in the House of Representatives.....	1	7	1
The Senate shall advise and consent to the ratification of all treaties, provided two-thirds of the members present concur.....	2	2	2
It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers not herein otherwise provided for.....	2	2	2
It may be convened by the President on extraordinary occasions.....	2	3	..
No State, without its consent, shall be deprived of its equal suffrage in the Senate.	5	..	..
<i>Senators.</i> They shall, immediately after assembling, under their first election, be divided into three classes, so that the seats of one-third shall become vacant at the expiration of every second year.....	1	3	2
No person shall be a Senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant, when elected, of the State for which he shall be chosen	1	3	3
The times, places, and manner of choosing Senators may be fixed by the legislature of a State, but Congress may, by law, make or alter such regulations, except as to the places of choosing.....	1	4	1

	Art.	Sec.	Cl.
<i>Senators.</i> If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2
They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the Senate, and in going to and returning from the same.....	1	6	1
Senators and Representatives shall receive a compensation, to be ascertained by law.	1	6	1
Senators and Representatives shall not be questioned for any speech or debate in either House, in any other place.....	1	6	1
No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased, during such term.	1	6	2
No person holding any office under the United States shall be a member of either House during his continuance in office.....	1	6	2
No Senator or Representative, or person holding an office of trust or profit under the United States shall be an elector for President and Vice-President.....	2	1	2
Senators and Representatives shall be bound by an oath or affirmation to support the Constitution	6	..	3
No person shall be a Senator or Representative who, having, as a Federal or State officer, taken an oath to support the Constitution, afterward engaged in rebellion against the United States	14	3	..
But Congress may, by a vote of two-thirds of each House, remove such disability. [Amendments.]	14	3	..
<i>Service or labor</i> in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from.....	4	2	3
<i>Servitude</i> , except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any place subject to their jurisdiction. Neither slavery nor involuntary.....[Amendments.]	13	1	..
<i>Servitude.</i> The right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of	15	1	..
<i>Ships of war</i> in time of peace, without the consent of Congress. No state shall keep troops or	1	10	3
<i>Silver coin</i> a tender in payment of debts. No State shall make anything but gold and....	1	10	1
<i>Slaves.</i> Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any	14	4	..
<i>Slavery</i> nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither.....[Amendments.]	13	1	..
<i>Soldiers</i> shall not be quartered, in time of peace, in any house without the consent of the owner	3	..	..
<i>South Carolina</i> entitled to five Representatives in the first Congress.....	1	2	3
<i>Speaker</i> and other officers. The House of Representatives shall choose their.....	1	2	5
<i>Speech or of the press.</i> Congress shall make no law abridging the freedom of [Amendments.]	1	..	..
<i>Speedy and public</i> trial by a jury. In all criminal prosecutions the accused shall have a. [Amendments.]	6	..	..
<i>Standard of weights</i> and measures. Congress shall fix the.....	1	8	5
<i>State of the Union.</i> The President shall, from time to time, give Congress information of the	2	3	..
<i>State legislatures</i> , and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several.....	6	..	3
<i>States.</i> When vacancies happen in the representation from any State, the executive authority shall issue writs of election to fill such vacancies.....	1	2	4
Congress shall have power to regulate commerce among the several.....	1	8	3
No State shall enter into any treaty, alliance, or confederation.....	1	10	1
Shall not grant letters of marque and reprisal.....	1	10	1
Shall not coin money	1	10	1
Shall not emit bills of credit.....	1	10	1
Shall not make anything but gold and silver coin a tender in payment of debts....	1	10	1
Shall not pass any bill of attainder, <i>ex post facto</i> law, or law impairing the obligation of contracts	1	10	1
Shall not grant any title of nobility.....	1	10	1
Shall not, without the consent of Congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.....	1	10	2
Shall not, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.....	1	10	3
Full faith and credit in every other State shall be given to the public acts, records, and judicial proceedings of each State.....	4	1	..
Congress shall prescribe the manner of proving such acts, records and proceedings.	4	1	..
Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.....	4	2	1
New States may be admitted by Congress into this Union.....	4	3	1
But no new State shall be formed or erected within the jurisdiction of another State	4	3	1
Nor any State formed by the junction of two or more States, or parts of States, without the consent of the legislatures as well as of Congress.....	4	3	1
No State shall be deprived, without its consent, of its equal suffrage in the Senate..	5	..	..

	Art.	Sec.	Cl.
<i>States.</i> Three-fourths of the legislatures of the States, or conventions of three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution.	5	..	..
The United States shall guarantee a republican form of government to every State in the Union	4	4	..
They shall protect each State against invasion	4	4	..
And on application of the legislature, or the executive (when the legislature can not be convened), against domestic violence.....	4	4	..
The ratification by nine States shall be sufficient to establish the Constitution between the States so ratifying the same.....	7	..	..
When the choice of President shall devolve on the House of Representatives, the vote shall be taken by States.....[Amendments.]	12	..	..
But in choosing the President the vote shall be taken by States, the representation from each State having one vote.....[Amendments.]	12	..	..
A quorum for choice of President shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice	12	..	..
<i>States</i> or the people. Powers not delegated to the United States, nor prohibited to the States, are reserved to the.....[Amendments.]	10	..	..
<i>Suffrage</i> in the Senate. No State shall be deprived, without its consent, of its equal....	5	..	..
<i>Suits</i> at common law, where the value in controversy shall exceed \$20, shall be tried by Jury	7	..	..
In law or equity, against one of the States, by citizens of another State, or by citizens of a foreign State. The judicial power of the United States shall not extend to	11	..	..
<i>Supreme Court.</i> Congress shall have power to constitute tribunals inferior to the.....	1	8	9
<i>Supreme Court,</i> and such inferior courts as Congress may establish. The judicial power of the United States shall be vested in one.....	3	1	..
<i>Supreme Court.</i> The judges of the Supreme and inferior courts shall hold their offices during good behavior	3	1	..
The compensation of the judges shall not be diminished during their continuance in office	3	1	..
Shall have original jurisdiction. In all cases affecting ambassadors, other public ministers, and consuls, and in which a State may be a party, the.....	3	2	2
Shall have appellate jurisdiction, both as to law and the fact, with such exceptions and regulations as Congress may make. The.....	3	2	2
<i>Supreme law</i> of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States, shall be the.....	6	..	2
The judges in every State shall be bound thereby.....	6	..	2
<i>Suppress</i> insurrections and repel invasions. Congress shall provide for calling forth the militia to execute the laws.....	1	8	15
<i>Suppression</i> of insurrection or rebellion shall not be questioned. The public debt, including the debt for pensions and bounties, incurred in the.....[Amendments.]	14	4	..

T.

<i>Tax</i> shall be laid unless in proportion to the census or enumeration. No capitation or other direct	1	9	4
<i>Tax</i> or duty shall be laid on articles exported from any State. No.....	1	9	5
<i>Taxes</i> (direct), and Representatives, how apportioned among the several States. [See Fourteenth Amendment, Section 2.].....	1	2	3
<i>Taxes,</i> duties, imposts, and excises. Congress shall have power to lay.....	1	8	1
They shall be uniform throughout the United States.....	1	8	1
<i>Temporary appointments</i> until the next meeting of the legislature. If vacancies happen in the Senate in the recess of the legislature of a State, the executive of the State shall make	1	3	2
<i>Tender</i> in payment of debts. No State shall make anything but gold and silver coin a.	1	10	1
<i>Term of four years.</i> The President and Vice-President shall hold their offices for the....	2	1	1
<i>Term</i> for which he is elected. No Senator or Representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the.....	1	6	2
<i>Territory</i> or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the.....	4	3	2
<i>Test</i> as a qualification for any office or public trust shall ever be required. No religious.	6	..	3
<i>Testimony</i> of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the.....	3	3	1
<i>Three-fourths of the legislatures</i> of the States, or conventions in three-fourths of the States, as Congress shall prescribe, may ratify amendments to the Constitution.	5	..	..
<i>Tie.</i> The Vice-President shall have no vote unless the Senate be equally divided.....	1	3	4
<i>Times, places, and manner</i> of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof.....	1	4	1
But Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.....	1	4	1
<i>Title of nobility.</i> The United States shall not grant any.....	1	9	8
No State shall grant any.....	1	10	1
<i>Title</i> of any kind, from any king, prince, or foreign state, without the consent of Congress. No person holding any office under the United States shall accept of any	1	9	8

	Art.	Sec.	Cl.
<i>Tonnage</i> without the consent of Congress. No State shall lay any duty of.....	1	10	3
<i>Tranquillity</i> , provide for the common defense, etc. To insure domestic.....[Preamble.]	..	..	..
<i>Treason</i> shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort.....	3	3	1
No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of.....	3	3	1
Congress shall have power to declare the punishment of.....	3	3	2
Shall not work corruption of blood. Attainder of.....	3	3	2
Shall not work forfeiture, except during the life of the person attainted. Attainder of	3	3	2
<i>Treason, bribery</i> , or other high crimes and misdemeanors. The President, Vice-President, and all civil officers shall be removed from office on impeachment for, and conviction of	2	4	..
<i>Treason, felony and breach of the peace</i> . Senators and Representatives shall be privileged from arrest while attending, or while going to or returning from the sessions of Congress, except in cases of.....	1	6	1
<i>Treasury</i> , but in consequence of appropriations made by law. No money shall be drawn from the	1	9	7
<i>Treaties</i> . The President shall have power, with the advice and consent of the Senate, provided two-thirds of the Senators present concur, to make.....	2	2	2
The judicial power shall extend to all cases arising under the Constitution, laws, and	3	2	1
They shall be the supreme law of the land, and the judges in every State shall be bound thereby	6	..	2
<i>Treaty</i> , alliance, or confederation. No State shall enter into any.....	1	10	1
<i>Trial</i> , judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment....	1	3	7
<i>Trial by jury</i> . All crimes, except in cases of impeachment, shall be tried by jury.....	3	2	3
Such trial shall be held in the State within which the crime shall have been committed	3	2	3
But when not committed within a State, the trial shall be at such a place as Congress may, by law, have directed.....	3	2	3
In all criminal prosecutions the accused shall have a speedy and public [Amendments.]	6	..	..
Suits at common law, when the amount exceeds \$20, shall be by.....[Amendments.]	7	..	..
<i>Tribunals</i> inferior to the Supreme Court. Congress shall have power to constitute.....	1	8	9
<i>Troops</i> or ships of war in time of peace, without the consent of Congress. No State shall keep	1	10	3
<i>Trust or profit</i> under the United States, shall be an elector for President and Vice-President. No Senator, Representative, or person holding any office of.....	2	1	2
<i>Two-thirds</i> of the members present. No person shall be convicted on an impeachment without the concurrence of.....	1	3	6
<i>Two-thirds</i> may expel a member. Each House, with the concurrence of.....	1	5	2
<i>Two-thirds</i> . A bill returned by the President with his objections, may be repassed by each House by a vote of.....	1	7	2
<i>Two-thirds</i> of the Senators present concur. The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided.....	2	2	2
<i>Two-thirds</i> of the legislatures of the several States. Congress shall call a convention for proposing amendments to the Constitution on the application of.....	5	..	..
<i>Two-thirds</i> of both Houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever.....	5	..	..
<i>Two-thirds</i> of the States. When the choice of a President shall devolve on the House of Representatives, a quorum shall consist of a member or members from [Amendments.]	12	..	..
<i>Two-thirds</i> of the whole number of Senators. A quorum of the Senate, when choosing a Vice-President, shall consist of.....[Amendments.]	12	..	..
<i>Two-thirds</i> , may remove the disabilities imposed by the third section of the Fourteenth Amendment. Congress, by a vote of.....[Amendments.]	14	3	..
<i>Two years</i> . Appropriations for raising and supporting armies shall not be for a longer term than	1	8	12

U.

<i>Union</i> . To establish a more perfect.....[Preamble.]
The President shall, from time to time, give to Congress information of the state of the	2	3	..
New States may be admitted by Congress into this.....	4	3	1
But no new States shall be formed or erected within the jurisdiction of another....	4	3	1
<i>Unreasonable</i> searches and seizures. The people shall be secured in their persons, houses, papers, and effects against.....[Amendments.]	4	..	..
And no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.....[Amendments.]	4	..	..
<i>Unusual</i> punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and.....[Amendments.]	8	..	..

	Art.	Sec.	Cl.
<i>Use</i> without just compensation. Private property shall not be taken for public. [Amendments.]	5	..	..
<i>Useful</i> arts, by securing for limited times to authors and inventors the exclusive right to their writings and inventions. Congress shall have power to promote the progress of science and the.....	1	8	8

V.

<i>Vacancies</i> happening in the representation of a State. The executive thereof shall issue writs of election to fill.....	1	2	4
<i>Vacancies</i> happening in the Senate in the recess of the legislature of a State. How filled.	1	3	2
<i>Vacancies</i> that happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session. The President shall have power to fill	2	2	3
<i>Validity</i> of the public debt incurred in suppressing insurrection against the United States, including debt for pensions and bounties, shall not be questioned. [Amendments.]	14	4	..
<i>Vessels</i> bound to or from the ports of one State, shall not be obliged to enter, clear, or pay duties in another State.....	1	9	6
<i>Veto</i> of a bill by the President. Proceedings of the two Houses upon the.....	1	7	2
<i>Vice-President</i> of the United States shall be President of the Senate.....	1	3	4
He shall have no vote unless the Senate be equally divided.....	1	3	4
The Senate shall choose a President <i>pro tempore</i> in the absence of the.....	1	3	5
He shall be chosen for the term of four years.....	2	1	1
The number and the manner of appointing electors for President and.....	2	1	2
In case of the removal, death, resignation, or inability of the President, the powers and duties of his office shall devolve on the.....	2	1	5
Congress may provide, by law, for the case of the removal, death, resignation, or inability both of the President and.....	2	1	5
On impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors, shall be removed from office. The.....	2	4	..
<i>Vice-President. The manner of choosing the.</i> The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments.]	12	..	..
The electors shall name, in distinct ballots, the person voted for as Vice-President. [Amendments.]	12	..	..
They shall make distinct lists of the persons voted for as Vice-President, which lists they shall sign and certify, and send sealed to the seat of Government directed to the President of the Senate.....[Amendments.]	12	..	..
The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall be then counted. [Amendments.]	12	..	..
The person having the greatest number of votes shall be Vice-President, if such number be a majority of the whole number of electors.....[Amendments.]	12	..	..
If no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President.....[Amendments.]	12	..	..
A quorum for this purpose shall consist of two-thirds of the whole number of Senators; and a majority of the whole number shall be necessary to a choice. ....[Amendments.]	12	..	..
But if the House shall make no choice of a President before the 4th of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.....[Amendments.]	12	..	..
No person constitutionally ineligible as President shall be eligible as [Amendments.]	12	..	..
<i>Violence.</i> The United States shall guarantee to every State a republican form of government, and shall protect each State against invasion and domestic.....	4	4	..
<i>Virginia</i> entitled to ten Representatives in the first Congress.....	1	2	3
<i>Vote.</i> Each Senator shall have one.....	1	3	1
The Vice-President, unless the Senate be equally divided, shall have no.....	1	3	4
<i>Vote</i> requiring the concurrence of the two Houses (except upon a question of adjournment) shall be presented to the President. Every order, resolution, or.....	1	7	3
<i>Vote</i> shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The right of citizens of the United States to.....[Amendments.]	15	1	..
<i>Vote of two-thirds.</i> Each House may expel a members by a	1	5	2
A bill vetoed by the President may be repassed in each House by a.....	1	7	2
No person shall be convicted on an impeachment, except by a.....	1	3	6
Whenever both Houses shall deem it necessary, Congress may propose amendments to the Constitution by a.....	5	..	..
The President may make treaties with the advice and consent of the Senate, by a.....	2	2	2
Disabilities incurred by participation in insurrection or rebellion, may be relieved by Congress by a.....[Amendments.]	14	3	..

W.

<i>War</i> , grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to declare.....	1	8	11
For governing the land and naval forces. Congress shall have power to make rules and articles of	1	8	14
No State shall without the consent of Congress, unless actually invaded, or in such imminent danger as will not admit of delay, engage in.....	1	10	3

	Art.	Sec.	Cl.
<i>War</i> against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying.....	3	3	1
<i>Warrants</i> shall issue but upon probable cause, on oath or affirmation, describing the place to be searched, and the person or things to be seized. No [Amendments.]	4	..	..
<i>Weights and measures.</i> Congress shall fix the standard of.....	1	8	5
<i>Welfare</i> , and to secure the blessings of liberty, etc. To promote the general [Preamble.]	..	..	..
<i>Welfare.</i> Congress shall have power to provide for the common defense and general....	1	8	1
<i>Witness</i> against himself. No person shall, in a criminal case, be compelled to be a. [Amendments.]	5	..	..
<i>Witnesses</i> against him. In all criminal prosecutions the accused shall be confronted with the .....[Amendments.]	6	..	..
<i>Witnesses</i> in his favor. In all criminal prosecutions the accused shall have compulsory process for obtaining.....[Amendments.]	6	..	..
<i>Witnesses</i> to the same overt act, or on confession in open court. No person shall be convicted of treason unless on the testimony of two.....	3	3	1
<i>Writ of habeas corpus</i> shall not be suspended unless, in case of rebellion or invasion, the public safety may require it.....	1	9	2
<i>Writs</i> of election to fill vacancies in the representation of any State. The executive of the State shall issue	1	2	4
<i>Written</i> opinion of the principal officer in each of the Executive Departments on any subject relating to the duties of his office. The President may require the.....	2	2	1

Y.

<i>Yeas and nays</i> of the members of either House shall, at the desire of one-fifth of those present, be entered on the journals.....	1	5	3
The votes of both Houses upon the reconsideration of a bill returned by the President with his objections shall be determined by.....	1	7	2

ORDINANCE OF 1787.

[THE CONFEDERATE CONGRESS, JULY 13, 1787.]

An Ordinance for the government of the territory of the United States northwest of the river Ohio.

The ordinance of 1787 is cited in *Permoli v. First Municipality*, 44 U. S. (3 How.) 589; *Messenger v. Mason*, 77 U. S. (10 Wall.) 507.

The Supreme Court of the United States holds that the Ordinance of 1787 is not in force in Ohio or in any part of the Northwest territory; for two reasons:

The ordinance of 1787 was superseded by the adoption of the constitution of the United States. Such of the provisions as are yet in force owe their validity to acts of congress passed under the present constitution, during the territorial government of the northwest territory, and since to the constitutions and laws of the states formed in it: *Strader v. Graham*, 51 U. S. (10 How.) 82.

See to the same effect: *Van Brocklen v. Tennessee*, 117 U. S. 151.

Under the decisions of the Supreme Court of the United States no statutes for the government of a territory or for its admission as a state can operate as a constitutional limitation upon such state or upon its legislature after its admission into the Union: *Pollard's Lessee v. Hagan*, 44 U. S. (3 How.) 212; *Strader v. Graham*, 51 U. S. (10 How.) 82; *Withers v. Buckley*, 61 U. S. (20 How.) 84; *Cardwell v. Bridge Co.*, 113 U. S. 205; *Willamette Iron Bridge Co. v. Hatch*, 125 U. S. 1; *Ward v. Race Horse*, 163 U. S. 504; *Bolln v. Nebraska*, 176 U. S. 83; *Coyle v. Oklahoma*, 221 U. S. 559.

"So far as this court has found occasion to advert to the effect of enabling acts as affirmative legislation affecting the power of new states after admission, there is to be found no sanction for the contention that any state may be deprived of any power constitutionally possessed by other states, as states, by reason of the terms in which the acts admitting them to the Union have been framed": *Coyle v. Oklahoma*, 221 U. S. 559.

Accordingly upon the admission of each state into the Union, the Ordinance of 1787 ceased to have any effect as a constitutional limitation upon such state or upon its legislature: *Permoli v. First Municipality*, 44 U. S. (3 How.) 589; *Escanaba Co. v. Chicago*, 107 U. S. 678; *Van Brocklin v. Tennessee*, 117 U. S. 151; *Hulse v. Glover*, 119 U. S. 543; *Sands v. Manistee River Improvement Co.*, 123 U. S. 288.

Some parts of the ordinance of 1787, for the government of the northwestern territory, were designed temporarily to regulate the government of the territory. These were necessarily abolished on a change from a territorial to a state government. Other parts were designed to be permanent and were sanctioned by compact. These were comprised in six articles which were declared to be unalterable except by common consent. Some of these, however, being guaranteed in the federal constitution, subsequently adopted, may be considered as practically annulled. And any provisions of the ordinance which are repugnant to the constitution of Ohio, may be considered as also annulled. The people of the state adopted the constitution, and it was sanctioned by congress, so that here was the common consent required by the compact for the abrogation of any of its provisions. But the articles respecting the navigableness of certain waters, and the carrying places between them, remain without modification, and also the article which prohibits slavery. These stand unrepealed, and others, unless they should be considered as repealed by implication. They are not incompatible with state sovereignty: *Spooner v. McConnell*, 1 McLean, 337, Fed. Cases, 13245.

The Supreme Court of Ohio, however, holds that the ordinance of 1787 is still in force in Ohio: *State v. Boone*, 84 O. S. 346, on rehearing 85 O. S. 313.

"Perhaps it may be said that the adoption of a constitution by the people of Ohio superseded the ordinance of 1787, and that the constitution of Ohio contains no such provision as that which we have quoted from Art. II, of the ordinance of 1787. We recur again to the 'articles of compact,' and quote from Art. V: 'And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever: Provided, the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles.' If our constitution, instead of creating a republican form of government for the state, had provided a pure democracy, a government directly by the people, and so framed, it had been accepted by the president and congress of the

ORDINANCE OF 1787.

United States, there might have been some reason for the claim that, in that respect, the compact which was to 'remain forever unaltered, unless by common consent' had been repealed by implication; yet, even under such circumstances, a conclusive presumption would not be raised that the compact had been altered, without the common consent of all the parties thereto. But if the convention which prepared our constitution had omitted from the bill of rights, the famous interdiction against slavery, contained in Art. VI, of the ordinance, would that have justified the conclusion that the compact was altered and that the existence of slavery in Ohio would be constitutional? Or, to put the question in another form, if our constitution contained nothing whatever in regard to the privilege of the writ of habeas corpus, or to trial by jury, or to proportional representation of the people in the legislature, or to the prohibition of cruel and unusual punishments, it could not be justly inferred that the great compact had been altered and that these privileges and guarantees had been subtracted from the rights of the citizens, and were not included among the rights reserved by the people (Const. of Ohio, Art. I, § 20), because there would have been nothing in the constitution which was inconsistent with the ordinance and the declared purpose thereof, 'to fix and establish these principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory,' and that these 'articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable unless by common consent': *State v. Boone*, 84 O. S. 346. See also *State v. Boone*, 85 O. S. 313.

"We are not unaware of various dicta which have appeared from time to time in opinions by learned justices of the supreme court of the United States, beginning with *Pollard's Lessee v. Hagan* (3 How. 212), and *Permoli v. First Municipality* (3 How. 589), *Strader v. Graham* (10 How. 82). But it requires no acute analysis to differentiate those cases and to show that they do not go very thoroughly into the question whether the ordinance of 1787 can be superseded otherwise than by the 'common consent' of the parties to the compact as required by the terms of the ordinance, or whether such 'common consent' ever has been given; and, giving the fullest effect that can be claimed from those remarks by the distinguished judges, it is obvious that they ignore the distinction between a mere act of congress which may be repealed or superseded by subsequent acts, and a solemn and formal 'compact' in the nature of a treaty as it were, between the proprietary states and the people and states of the territory which was subsequently to be erected into several states of this Union. They ignore, moreover, the fact that the compact, on the good faith of which the original proprietors ceded this territory to the United States, expressly declared that the principles declared therein shall be the basis of 'all laws, constitutions and governments which forever hereafter shall be formed in the said territory.' And, at best these declarations rest on no stronger foundation than the provision of the compact itself, namely, that a state with constitutional limitations as provided, 'shall be admitted, by its delegates into the congress of the United States, on an equal footing with the original states, in all respects whatever.' See cases above cited and *Escanaba Co. v. Chicago*, 170 U. S. 678, 688, 689; *Van Brocklin v. Tennessee*, 117 U. S. 151, 159; *Sands v. Manistee River Improvement Co.*, 123 U. S. 288, 295, 296; *Willamette Iron Bridge Co. v. Hatch*, 125 U. S. 1, 9, 10.

"Whatever that clause may mean, it certainly does not mean that all the state constitutions shall be, or are, alike, nor that a new state erected in the northwest territory, shall be understood to surrender all the guarantees of the compact as a condition of admission as a state. We have thus briefly indicated the reasons for our belief that the great charter of the northwest territory is still under, and above, and before, all laws or constitutions which have yet been made in the states which are parts of that territory, and that under its guarantees the state has not the right to draft a citizen into particular service without substantial compensation. At least, it is clear to us that the provisions of this statute which require a professional man to search out nonprofessional information and certify it to state authorities, is unnecessary, unreasonable and arbitrary, and is not, therefore, a valid exercise of police power. The demurrer to the indictment should have been sustained, and, therefore, the judgment of the circuit court, reversing the judgment of the court of common pleas, is affirmed and defendant discharged": *State v. Boone*, 84 O. S. 346. See also *State v. Boone*, 85 O. S. 313.

The part of the ordinance of 1787 not repealed by the constitution or statutes in express words or by fair implications, is still in force in this state: *Lyon v. Lyon*, 1 O. C. C. (N.S.) 246, 14 O. C. D. 498.

The constitution of Ohio, 1802, or of 1851, did not amplify or enlarge the powers asserted by the ordinance of 1787. The ordinance merely omitted to mention powers inherent in the people which the framers of that ordinance did not see fit to enumerate in that instrument. But the power was inherent in the people, nevertheless: *Cincinnati v. Railway*, 9 O. N. P. (N.S.) 433.

"The ordinance of 1787 never was in force in that part of Ohio called the Connecticut Western Reserve": *Hutchinson v. Thompson*, 9 O. 52.

The Connecticut Reserve, ceded to the United States after the adoption of the ordinance of 1787, is subject to that instrument equally, as other parts of the territory northwest of the Ohio: *Palmer v. Commissioners*, 3 McLean, 226, Fed. Cases, 10688, 2 O. F. D. 264.

For a consideration of the ordinance of 1787 see:

McCormick v. Sullivant, 23 U. S. (10 Wheat.) 192; *LaGrange v. Chouteau*, 29 U. S. (4 Pet.) 287; *The Cherokee Nation v. Georgia*, 30 U. S. (5 Pet.) 1; *Menard v. Asposia*, 30 U. S. (5 Pet.) 505; *Lessee of Pollard's Heirs v. Kibbe*, 39 U. S. (14 Pet.) 353; *Armstrong v. Treasurer*, 41 U. S. (16 Pet.) 281; *Pollard v. Hagan*, 44 U. S. (3 How.) 212; *Carrol v.*

Safford, 44 U. S. (3 How.) 441; Peamoli v. New Orleans, 44 U. S. (3 How.) 589; Jones v. Van Zandt, 46 U. S. (5 How.) 215; Webster v. Reid, 52 U. S. (11 How.) 437; Trustees of Indiana, 55 U. S. (14 How.) 268; Fanning v. Gregoire, 57 U. S. (16 How.) 524; United States v. Guthrie, 58 U. S. (17 How.) 284; Mackey v. Coxe, 59 U. S. (18 How.) 100; Cooper v. Roberts, 59 U. S. (18 How.) 173; Murray's Lessee v. Land Co., 59 U. S. (18 How.) 272; Pease v. Beck, 59 U. S. (18 How.) 595; Conway v. Taylor's Executor, 66 U. S. (1 Black) 603; McCool v. Smith, 66 U. S. (1 Black) 459; Bates v. Brown, 72 U. S. (5 Wall.) 710; Messenger v. Mason, 77 U. S. (10 Wall.) 507; Pumpelly v. Green Bay Co., 80 U. S. (13 Wall.) 166; Clinton v. Englebrecht, 80 U. S. (13 Wall.) 434; The Montello, 87 U. S. (20 Wall.) 430; Packet Co. v. St. Louis, 100 U. S. (10 Otto) 423; Bridge Co. v. Hatch, 125 U. S. 1; Indiana v. Kentucky, 136 U. S. 479; Mormon Church v. United States, 136 U. S. 1; McAllister v. United States, 141 U. S. 174; Wingard v. United States, 141 U. S. 201; Boyd v. Thayer, 143 U. S. 135; Bridge Co. v. Henderson City, 173 U. S. 592; Downes v. Bidwell, 182 U. S. 244; Tean v. Calumet Canal Co., 190 U. S. 452; St. Clair County v. Transfer Co., 192 U. S. 454.

SECTION 1. *Be it ordained by the United States in Congress assembled*, That the said territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

SECTION 2. *Be it ordained by the authority aforesaid*, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Cited: Johns v. Johns, 1 O. S. 350; Bates v. Brown, 72 U. S. (5 Wall.) 710.

The adoption and publication in 1795, of a law of Pennsylvania requiring but one witness to a deed of conveyance by implication, repealed the clause of the ordinance of 1787 requiring two witnesses: Lessee of Moore v. Vance, 1 O. 1.

Legal title could not be acquired by parol before the statute of frauds, because of § 2, of the ordinance of 1787: Lessee of Lindsley v. Coats, 1 O. 243.

This was the first legal enactment touching the conveyance of real property, in force after the territory had been ceded by Virginia, and since then there has always been a law of some kind presenting the mode of sale or conveyance of realty: Lessee of Allen v. Parish, 3 O. 107.

The rule of descent in this section, that the whole and half-blood stand equal, is repealed by G. C. § 8574: Lyon v. Lyon, 1 O. C. C. (N.S.) 246, 14 O. C. D. 498.

That the legislature has power to change the rule that there should be no distinction in descent between kindred of the whole blood and kindred of the half-blood, but that the courts could not change such rule if the legislature did not, see Stone v. Doster, 7 O. C. C. 8, 3 O. C. D. 637 [affirmed in Stembel v. Martin, 50 O. S. 495].

The ordinance of 1787 regulates the form of conveyance of real estate. An equity may be assigned or transferred in any form not prohibited by law. But, though the equity be conveyed, under the forms of a legal right, it does not change the title: *Lewis v. Baird*, 3 McLean, 56, Fed. Cases, 8316, 2 O. F. D. 197.

SECTION 3. *Be it ordained by the authority aforesaid*, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

SECTION 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

SECTION 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Cited: *McClaskey v. Barr*, 54 Fed. 781, 7 O. F. D. 556; *Clinton v. Engelbrecht*, 80 U. S. (13 Wall.) 434.

Under the ordinance of 1787 the governor and judges had power to adopt from the statutes of other states, attachment as well as other laws: *Lessee of Cochran's Heirs v. Loring*, 17 O. 409.

SECTION 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

SECTION 7. Previous to the organization of the general assembly the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

SECTION 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

SECTION 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *Provided*, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: *Provided also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

SECTION 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

SECTION 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

SECTION 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

SECTION 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

SECTION 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territories.

ARTICLE II.

The inhabitants of the said territory shall always be entitled to the benefits of the writs of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, *bona fide*, and without fraud previously formed.

Referred to: State v. Boone, 84 O. S. 346; Shaver v. The Pennsylvania Company, 71 Fed. 931, 9 O. F. D. 221.

Since this ordinance went into effect persons within the territory of this state have been secured in the right of trial by jury: Work v. State, 2 O. S. 297.

ARTICLE III.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Cited: Board of Education v. Minor, 23 O. S. 211; Burton v. Board of Education, 5 O. N. P. (N.S.) 294, 18 O. D. (N.P.) 67.

See Roberts v. Cooper, 61 U. S. (20 How.) 467.

ARTICLE IV.

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

Cited: Hickok v. Hine, 23 O. S. 523.

Where a dam is erected across a stream that is navigable within the terms of the ordinance, though the erection of the dam was authorized by the legislature, upon certain terms and conditions, if loss be sustained by navigation in consequence of the dam, the owners are responsible, though all diligence was used to prevent the dam creating obstruction to the navigation: Hogg v. Zanesville Canal Co., 5 O. 410.

A state law including steamboats as a portion of the property is subject to taxation is not in violation of this section: Perry v. Torrence, 8 O. 522.

The clause in the ordinance of 1787, for the government of the northwest territory, declaring the navigable rivers therein "common highways, etc., without any tax, impost or duty therefor," does not prohibit the states formed in that territory from legislating respecting those rivers, or affecting their navigation, when their regulations subject equally their own citizens and the citizens of other states, to the inconvenience resulting from such legislation. The clause imposes a limitation upon the power of congress to control the navigation of such rivers, within the limits of the new states, and prohibits the states from imposing discriminating restrictions, duties and imposts upon the citizens of other states, prohibiting the states from legislating to regulate commerce among the states: Hutchinson v. Thompson, 9 O. 52.

While congress may, in the assertion of its power under the constitution to regulate commerce among the states, exercise control over the navigable waters within this state, so far as to protect and improve their free navigation, yet, while this power remains dormant and uneffectuated by legislation, the state has plenary authority over bridges across them, and there is nothing in the ordinance of 1787 that precludes her from exercising such authority: Commissioners v. Board of Public Works, 39 O. S. 628.

The provision in the ordinance of 1787 that certain navigable waters "shall be common highways and forever free," does not prevent the improvement of the navigation of such waters by a state. The ordinance referred to these waters in their natural state. If they shall be improved by slack-water navigation or otherwise, a reasonable toll for the increased facility would not violate the ordinance: Palmer v. Commissioners, 3 McLean, 226, Fed. Cases, 10688, 2 O. F. D. 264.

Under the ordinance of 1787, the public right consists in an unobstructed use of every navigable water mentioned therein, and the local right consists in crossing such water. The general commercial right is paramount to all state authority: Works v. Railroad, 5 McLean, 425, Fed. Cases, 18046, 3 O. F. D. 101.

The provisions of the ordinance in regard to certain navigable streams, and the carrying places between them, do not prohibit the legislature of the state from improving the navigation of such rivers and carrying places: Spooner v. McConnell, 1 McLean, 337, Fed. Cases, 13245; see, also, Packet Co. v. Keokuk, 95 U. S. 80.

See State v. Bridge Co., 50 U. S. (9 How.) 647; Strader v. Graham, 51 U. S. (10 How.) 82; State v. Bridge Co., 54 U. S. (13 How.) 518; Bridge Co. v. United States, 105 U. S. (15 Otto) 470; Escanaba Co. v. Chicago, 107 U. S. (17 Otto) 678.

ARTICLE V.

There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however,* And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: *Provided,* The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

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Cited: State v. Boone, 84 O. S. 346; Pollard v. Hagan, 44 U. S. (3 How.) 212.

See Scott v. Sanford, 60 U. S. (19 How.) 393.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

Cited: State v. Boone, 84 O. S. 346.

The fugitive slave law, passed by congress February 12, 1793, was in force in the northwestern territory, and was not repugnant to the ordinance of 1787: Jones v. Van Zant, 46 U. S. (5 How.) 215.

See Strader v. Gorman, 51 U. S. (10 How.) 82; Ex parte Wilson, 114 U. S. 417

Constitution of the State of Ohio of 1802.

ARTICLE I.

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Preamble.

WE, the people of the eastern division of the territory of the United States, north-west of the river Ohio, having the right of admission into the general government, as a member of the Union, consistent with the Constitution of the United States, the ordinance of Congress of one thousand seven hundred and eighty-seven, and of the law of Congress, entitled "An act to enable the people of the eastern division of the territory of the United States, north-west of the river Ohio, to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes;" in order to establish justice, promote the welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish the following constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of the state of Ohio.

ARTICLE I.

OF THE LEGISLATIVE POWER.

In whom legislative power vested.

SECTION 1. The legislative authority¹ of this state shall be vested in a GENERAL ASSEMBLY, which shall consist of a senate and house of representatives, both to be elected by the people. (*See Const. 1851, Art. II, § 1.*)

I. Powers of general assembly.

II. Limitations on powers of general assembly.

See Const. 1851, Art. II, § 1.

I. POWERS OF GENERAL ASSEMBLY.

The power of taxation is governmental in its character, is granted to the general assembly by the general grant of legislative power. It can be exercised only by the legislature in compliance with the provisions of the constitution; and it can be exercised by municipal corporations only in accordance with statutory provisions authorizing the exercise of such power: *Mays v. Cincinnati*, 1 O. S. 268.

A grant of legislative power carries with it the power of levying taxes; and this includes the power to provide for special assessments to pay for the public improvements which is levied upon the property benefited by such improvement and in proportion to such benefit: *Scovill v. Cleveland*, 1 O. S. 126.

Although the legislature may provide remedies within this state, for the collection of claims, or enforcement of personal liabilities arising out of the state, it is not within the competency of the legislative power, upon grounds of public policy, to create personal liabilities and impose them on persons and property out of the jurisdiction of Ohio, and on account of transactions occurring beyond the territorial limits of the state: *Steamboat Ohio v. Stunt*, 10 O. S. 583.

"By the first section of the first article of the constitution of 1802, it was ordained, that, 'the legislative authority of the state shall be vested in a general assembly'. This it has been said, clothed that body with all power which in its nature is legislative, except so far as its power was qualified in other parts of the same instrument, or its exercise restrained by the constitution of the United States, while I believe that theory of the constitution is erroneous and that the true doctrine is that the legislature like other departments of the government, exercises only delegated power, yet, the power delegated to the general assembly is undeniably broad": *McGill v. State*, 34 O. S. 233.

Under the constitution the legislature may authorize county commissioners to subscribe to the capital stock of a railway corporation: *Railway v. Commissioners*, 1 O. S. 77.

The general assembly like the other departments of government, exercise only delegated authority; and any act passed by it not falling fairly within the scope of "legislative authority", is as clearly void as though expressly prohibited: *Railway v. Commissioners*, 1 O. S. 77.

The power of the general assembly to pass laws can not be delegated by them to any other body, or to the people: *Railway v. Commissioners*, 1 O. S. 77.

The act of March 1, 1851, to authorize the commissioners of a county to subscribe to the capital stock of the relator, does not delegate the legislative power or contravene the constitution of 1802, in providing that the subscription shall not be made until the assent of a majority of the electors of a county (except two townships) is first obtained at an election held for that purpose: *Railway v. Commissioners*, 1 O. S. 77.

It was competent for the legislature under that constitution to construct works of internal improvement on behalf of the state, or to aid in their construction by subscribing to the capital stock of corporations created for that purpose, and to levy taxes to raise the means; and by an exercise of the same power to authorize a county to subscribe to a work of that character running through or into such county, and to levy a tax to pay the subscription: *Railway v. Commissioners*, 1 O. S. 77.

The taxing power under the constitution of 1802 was an undeniable legislative function, to be exercised at the discretion of the general assembly, and subject to no limitation but that against poll taxes; and while this court is unanimous in the opinion that such laws involve a gross abuse of power, it possesses no authority to control that discretion, or to correct such abuses by the exercise of a veto power on such legislation: *Railway v. Commissioners*, 1 O. S. 77.

A majority of the electors of a county having decided in favor of the subscription, and the same having actually been made before the adoption of the present constitution; and the commissioners having elected, in pursuance of said act, to deliver the bonds of the county to the company in payment of the subscription, and having become bound to do so, and afterward refusing upon demand to deliver them, and showing no cause for such refusal except that the act aforesaid was of doubtful constitutionality; a writ of mandamus is the proper remedy to enforce the delivery: *Railway v. Commissioners*, 1 O. S. 77.

An act of the general assembly, authorizing the trustees of a township through which a railroad was to be made, to subscribe, on behalf of the township, to the capital stock of the railroad company, is not in conflict with the constitution of 1802: *Railway v. Trustees*, 1 O. S. 105.

The provisions in the charter of the "Lake and Trumbull Plank Road Company", passed February 14, 1849, by which the trustees of certain townships are respectively authorized to subscribe to the capital stock of said company if a majority of the qualified electors of the townships, respectively, assent thereto, is not in contravention of the constitution of 1802: *Loomis v. Spencer*, 1 O. S. 153.

Although a state legislature can not pass laws impairing the obligations of contracts, yet they may regulate them, prescribe their form, their effect, and the mode of their discharge, and every contract is supposed to be made with reference to these laws: *Smith v. Parsons*, 1 O. 236.

A legislature may create public corporations, and quasi corporations, or it may abolish them, or it may enlarge or restrict their powers: *Marietta v. Fearing*, 4 O. 428.

A legislature may modify or abolish remedies and methods of demonstrating remedies as long as some substantial remedy is left for invasions of rights: *Hays v. Armstrong*, 7 O. (pt. 1) 248.

II. LIMITATIONS ON POWERS OF GENERAL ASSEMBLY.

The general assembly, like the other departments of government, exercises only delegated authority; and any act passed by it not falling fairly within the scope of "legislative authority", is as clearly void as though expressly prohibited: *Railway v. Commissioners*, 1 O. S. 77.

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The power of the general assembly to pass laws cannot be delegated by them to any other body, or to the people: *Railway v. Commissioners*, 1 O. S. 77.

It is the right of the legislature to enact laws, and the province of the court to construe them. The legislature has no power to enact a law declaring what construction or decision the court shall make upon acts under which rights and liabilities have already been acquired or incurred. Where the court has put a construction upon an act, that construction is binding on all existing cases. The explanatory act operates prospectively, and has from the time of its passage the force and effect of a law. Where such explanatory act assumes to give construction to existing acts, and to govern the decision of the court as to cases pending it is judicial; and as the constitution confers judicial power upon the courts and withholds it from the legislature, to that extent such act will be inoperative. As a law, such an act will be enforced; as a construction of previous acts, under which cases are already pending in the courts, it will be held void: *Schooner Aurora Borealis v. Dobbie*, 17 O. 125.

Divorces are the subject of judicial, not legislative, action, and the constitution confers upon the legislature no power to grant them; but to avoid the consequences which would result from declaring all those void which have been granted by the legislature during the existence of the state, rendering illegitimate the issue of second marriages, the court will pronounce them valid: *Bingham v. Miller*, 17 O. 445.

The legislature has no power to divest rights which have become vested nor to impair the obligation of contracts which have already been entered into: *Smith v. Parsons*, 1 O. 236.

The broad power conferred by this section was subsequently limited by Art. XIII, § 1, and by Art. XIII, § 6, of the constitution of 1851: *State, ex rel., v. Cincinnati*, 20 O. S. 18; *Carr v. West Carrollton*, 8 O. C. C. 1, 4 O. C. D. 303.

Census; apportionment of representatives; number of representatives.

SECTION 2. Within one year after the first meeting of the general assembly, and within every subsequent term of four years, an enumeration of all the white male inhabitants, above twenty-one years of age, shall be made in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature and apportioned among the several counties, according to the number of white male inhabitants above twenty-one years of age in each, and shall never be less than twenty-four, nor greater than thirty-six, until the number of white male inhabitants, above twenty-one years of age, shall be twenty-two thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-six, nor exceed seventy-two. (*See Const. 1851, Art. XI.*)

See Const. 1851, Art. XI.

When chosen.

SECTION 3. The representatives shall be chosen annually, by the citizens of each county, respectively, on the second Tuesday of October. (*See Const. 1851, Art. II, § 2.*)

See Const. 1851, Art. II, § 2.

Qualifications of representatives.

SECTION 4. No person shall be a representative, who shall not have attained the age of twenty-five years, and be a citizen of the United States and an inhabitant of this state; shall also have resided within the limits of the county in which he shall be chosen, one year next preceding his election, unless he shall have been absent on the public business of the United States, or of this state, and shall have paid a state or county tax. (*See Const. 1851, Art. II, § 3.*)

See Const. 1851, Art. II, § 3.

Senators; when and how chosen.

SECTION 5. The senators shall be chosen biennially, by the qualified voters for representatives; and on their being convened in consequence of the first election, they shall be divided, by lot,

from their respective counties or districts, as near as can be, into two classes: the seats of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year; so that one-half thereof, as near as possible, may be annually chosen for ever thereafter. (*See Const. 1851, Art. II, § 2.*)

See const. 1851, Art. II, § 2.

SECTION 6. The number of senators shall, at the several periods of making the enumeration, before mentioned, be fixed by the legislature, and apportioned among the several counties or districts, to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each, and shall never be less than one-third, nor more than one-half, of the number of representatives.

Number of senators, and how apportioned.

SECTION 7. No person shall be a senator who has not arrived at the age of thirty years, and is a citizen of the United States; shall have resided two years in the county or district, immediately preceding the election, unless he shall have been absent on the public business of the United States, or of this state; and shall, moreover, have paid a state or county tax. (*See Const. 1851, Art. II, § 3.*)

Qualifications of senators.

See Const. 1851, Art. II, § 3.

SECTION 8. The senate and house of representatives, when assembled, shall each choose a speaker and its other officers; be judges of the qualifications and elections of its members, and sit upon its own adjournments: two-thirds of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members. (*See Const. 1851, Art. II, §§ 6, 7.*)

Powers of each house.

See Const. 1851, Art. II, §§ 6, 7.

SECTION 9. Each house shall keep a journal of its proceedings, and publish them: the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journals. (*See Const. 1851, Art. II, § 9.*)

Journals, and yeas and nays.

See Const. 1851, Art. II, § 9.

The journal provided for in this section, when taken in connection with the laws and resolutions, is the appropriate evidence of legislative action; and such journal can not be contradicted by oral evidence: *State, ex rel., v. Moffitt, 5 O. 358.*

SECTION 10. Any two members of either house shall have liberty to dissent from, and protest against, any act or resolution which they may think injurious to the public or any individual, and have the reasons of their dissent entered on the journals. (*See Const. 1851, Art. II, § 10.*)

Right of members to protest.

See Const. 1851, Art. II, § 10.

SECTION 11. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause; and shall have all other powers

Rules, and right of punishment and expulsion.

Art.I, § 12. CONSTITUTION OF THE STATE OF OHIO OF 1802.

necessary for a branch of the legislature of a free and independent state. (*See Const. 1851, Art. II, § 8.*)

See Const. 1851, Art. II, § 8.

Referred to in comparison with Art. II, § 8, of the constitution of 1851: State, ex rel., v. Guilbert, 75 O. S. 1.

Vacancies in either house; how filled.

SECTION **12.** When vacancies happen in either house, the governor, or the person exercising the power of the governor, shall issue writs of election to fill such vacancies. (*See Const. 1851, Art. II, § 11.*)

See Const. 1851, Art. II, § 11.

From the earliest history of Ohio it has been the practice of the general assembly to provide for vacancies that are likely to happen during the term of office of the persons composing their own body: State v. Choate, 11 O. 511.

Privilege of members from arrest, and of speech.

SECTION **13.** Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same;¹ and for any speech or debate in either house, they shall not be questioned in any other place. (*See Const. 1851, Art. II, § 12.*)

See Const. 1851, Art. II, § 12.

Contempts; how punished.

SECTION **14.** Each house may punish, by imprisonment, during their session, any person not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence; provided such imprisonment shall not, at any one time, exceed twenty-four hours.

When sessions to be public, and power of adjournment.

SECTION **15.** The doors of each house, and of committees of the whole, shall be kept open, except in such cases as, in the opinion of the house, require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting. (*See Const. 1851, Art. II, §§ 13, 14.*)

See Const. 1851, Art. II, §§ 13, 14.

Where bills to originate.

SECTION **16.** Bills may originate in either house, but may be altered, amended or rejected by the other. (*See Const. 1851, Art. II, § 15.*)

See Const. 1851, Art. II, § 15.

How often bills to be read; to be signed by the speakers.

SECTION **17.** Every bill shall be read on three different days in each house, unless, in case of urgency, three-fourths of the house where such bill is so depending, shall deem it expedient to dispense with this rule: and every bill having passed both houses, shall be signed by the speakers of their respective houses. (*See Const. 1851, Art. II, §§ 16, 17.*)

See Const. 1851, Art. II, §§ 16, 17.

Style of laws.

SECTION **18.** The style of the laws of this state shall be: "Be it enacted by the General Assembly of the State of Ohio." (*See Const. 1851, Art. II, § 18.*)

See Const. 1851, Art. II, § 18.

Salaries of officers.

SECTION **19.** The legislature of this state shall not allow the following officers of government greater annual salaries than as follows, until the year one thousand eight hundred and eight,

to wit:—The governor, not more than one thousand dollars; the judges of the supreme court, not more than one thousand dollars each; the presidents of the courts of common pleas, not more than eight hundred dollars each; the secretary of state, not more than five hundred dollars; the auditor of public accounts, not more than seven hundred and fifty dollars; the treasurer, not more than four hundred and fifty dollars; no member of the legislature shall receive more than two dollars per day, during his attendance on the legislature, nor more for every twenty-five miles he shall travel in going to, and returning from, the general assembly.

SECTION 20. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased, during such time. (*See Const. 1851, Art. II, § 19.*)

Exclusion from office.

See Const. 1851, Art. II, § 19.

Cited: *Pearson v. Stephens*, 13 O. C. C. 49, 7 O. C. D. 122 [reversed, *Pearson v. Stephens*, 56 O. S. 126].

SECTION 21. No money shall be drawn from the treasury, but in consequence of appropriations made by law. (*See Const. 1851, Art. II, § 22.*)

Appropriations.

See Const. 1851, Art. II, § 22.

SECTION 22. An accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws, annually.

How receipts, etc., to be published.

SECTION 23. The house of representatives shall have the sole power of impeaching, but a majority of all the members must concur in an impeachment: all impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence: no person shall be convicted without the concurrence of two-thirds of all the senators. (*See Const. 1851, Art. II, § 23.*)

Impeachments, how instituted and conducted.

See Const. 1851, Art. II, § 23.

SECTION 24. The governor, and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office; but judgment in such case shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust, under this state. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment and punishment, according to law. (*See Const. 1851, Art. II, § 24.*)

Who liable to impeachment and punishment.

See Const. 1851, Art. II, § 24.

SECTION 25. The first session of the general assembly shall commence on the first Tuesday of March next; and forever after, the general assembly shall meet on the first Monday of December, in every year, and at no other period, unless directed by law, or provided for by this constitution. (*See Const. 1851, Art. II, § 25.*)

When sessions of the general assembly to be held.

See Const. 1851, Art. II, § 25.

Art.I, § 26. CONSTITUTION OF THE STATE OF OHIO OF 1802.

Who eligible as candidates or members of the general assembly.

SECTION **26.** No judge of any court of law or equity, secretary of state, attorney general, register, clerk of any court of record, sheriff or collector, member of either house of congress, or person holding any office under the authority of the United States, or any lucrative office under the authority of this state, (provided that appointments in the militia or justices of the peace, shall not be considered lucrative offices), shall be eligible as a candidate for, or have a seat in, the general assembly. (*See Const. 1851, Art. II, § 4.*)

See Const. 1851, Art. II, § 4.

Who eligible to other offices.

SECTION **27.** No person shall be appointed to any office within any county, who shall not have been a citizen and inhabitant therein, one year next before his appointment, if the county shall have been so long erected, but if the county shall not have been so long erected, then within the limits of the county or counties out of which it shall have been taken.

Public defaulters not eligible as members of the general assembly.

SECTION **28.** No person who heretofore hath been, or hereafter may be, a collector or holder of public moneys, shall have a seat in either house of the general assembly, until such person shall have accounted for, and paid into the treasury, all sums for which he may be accountable or liable. (*See Const. 1851, Art. II, § 5.*)

See Const. 1851, Art. II, § 5.

ARTICLE II.

OF THE EXECUTIVE.

In whom executive power. vested.

SECTION **1.** The supreme executive power of this state shall be vested in the governor. (*See Const. 1851, Art. III, § 5.*)

See Const. 1851, Art. III, § 5.

When governor shall be chosen, and how; how his election to be contested.

SECTION **2.** The governor shall be chosen by the electors of the members of the general assembly, on the second Tuesday of October, at the same places, and in the same manner, that they shall respectively vote for members thereof. The returns of every election for governor, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them, in the presence of a majority of the members of each house of the general assembly: the person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint ballot of both houses of the general assembly. Contested elections for governor, shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law. (*See Const. 1851, Art. III, §§ 1, 3.*)

See Const. 1851, Art. III, §§ 1, 3.

His term of office; who eligible, and for what period.

SECTION **3.** The first governor shall hold his office until the first Monday of December, one thousand eight hundred and five, and until another governor shall be elected and qualified to office; and forever after, the governor shall hold his office

for the term of two years, and until another governor shall be elected and qualified; but he shall not be eligible more than six years, in any term of eight years. He shall be at least thirty years of age, and have been a citizen of the United States twelve years, and an inhabitant of this state four years next preceding his election. (*See Const. 1851, Art. III, § 2.*)

See Const. 1851, Art. III, § 2.

SECTION 4. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient. (*See Const. 1851, Art. III, § 7.*)

He shall recommend measures, etc.

See Const. 1851, Art. III, § 7.

SECTION 5. He shall have the power to grant reprieves and pardons, after conviction, except in cases of impeachment. (*See Const. 1851, Art. III, § 11.*)

May grant reprieves and pardons.

See Const. 1851, Art. III, § 11.

The constitution of 1802 (Art. II, § 5), unlike the present (constitution of 1851, Art. III, § 11), did not provide for conditional pardons and reprieves. In the absence of such a constitutional provision, it may be doubtful whether the executive was authorized to grant conditional pardons or reprieves at all: *Sterling v. Drake*, 29 O. S. 457.

SECTION 6. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected. (*See Const. 1851, Art. III, § 19.*)

His compensation.

See Const. 1851, Art. III, § 19.

SECTION 7. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed. (*See Const. 1851, Art. III, § 6.*)

He may require written information, etc.

See Const. 1851, Art. III, § 6.

SECTION 8. When any officer, the right of whose appointment is, by this constitution, vested in the general assembly, shall, during the recess, die, or his office by any means become vacant, the governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the legislature.

What vacancies the governor to fill.

The commission is evidence of an election or appointment, without which the officer can not proceed to act officially; although his right to his office is derived from his election or appointment, of which the commission is only evidence; and it is not derived from the commission itself. Since the power of appointing judges was conferred upon the general assembly by the constitution of 1802 (see Art. II, § 8), a law which authorized any body other than the general assembly to appoint a judge for any period of time beyond the close of the next session of the legislature would violate the constitution: *State, ex rel., v. Moffitt*, 5 O. 358.

SECTION 9. He may, on extraordinary occasions, convene the general assembly, by proclamation, and shall state to them, when assembled, the purposes for which they shall have been convened. (*See Const. 1851, Art. III, § 8.*)

When and how he may convene the general assembly.

See Const. 1851, Art. III, § 8.

Art.II, § 10. CONSTITUTION OF THE STATE OF OHIO OF 1802.

Commander-in-chief of militia.

SECTION 10. He shall be commander-in-chief of the army and navy of this state, and of the militia, except when they shall be called into the service of the United States. (*See Const. 1851, Art. III, § 10.*)

See Const. 1851, Art. III, § 10.

When he may adjourn the general assembly.

SECTION 11. In case of disagreement between the two houses, with respect to the time of adjournment, the governor shall have the power to adjourn the general assembly to such time as he thinks proper; provided it be not a period beyond the annual meeting of the legislature. (*See Const. 1851, Art. III, § 9.*)

See Const. 1851, Art. III, § 9.

Who shall fill his place when vacancy occurs.

SECTION 12. In case of the death, impeachment, resignation or removal of the governor from office, the speaker of the senate shall exercise the office of governor, until he be acquitted, or another governor shall be duly qualified. In case of the impeachment of the speaker of the senate, or his death, removal from office, resignation or absence from the state, the speaker of the house of representatives shall succeed to the office, and exercise the duties thereof, until a governor shall be elected and qualified. (*See Const. 1851, Art. III, §§ 15, 17.*)

See Const. 1851, Art. III, §§ 15, 17.

Who ineligible.

SECTION 13. No member of congress, or person holding any office under the United States, or this state, shall execute the office of governor. (*See Const. 1851, Art. III, § 14.*)

Const. 1851, Art. III, § 14.

Seal of state, and by whom kept.

SECTION 14. There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called "THE GREAT SEAL OF THE STATE OF OHIO." (*See Const. 1851, Art. III, § 12.*)

See Const. 1851, Art. III, § 12.

How grants and commissions issued.

SECTION 15. All grants and commissions shall be in the name, and by the authority of the state of Ohio, sealed with the seal, signed by the governor, and countersigned by the secretary. (*See Const. 1851, Art. III, § 13.*)

See Const. 1851, Art. III, § 13.

Cited: State, ex rel., v. Moffitt, 5 O. 358.

SECRETARY OF STATE.

Secretary of state, how appointed; term of office and duties.

SECTION 16. A secretary of state shall be appointed by a joint ballot of the senate and house of representatives, who shall continue in office three years, if he shall so long behave himself well: he shall keep a fair register of all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before either branch of the legislature; and shall perform such other duties as shall be assigned him by law. (*See Const. 1851, Art. III, §§ 1, 2.*)

See Const. 1851, Art. III, §§ 1, 2.

The constitution of the state contemplates two different methods of conferring office; one is by appointment, the other by election. Whenever the office is to be conferred by the people, or by any con-

siderable body of the people, it is spoken of as an election. Whenever it is to be conferred by an individual, or by a select number of individuals, as by a judicial court, or by the general assembly, it is spoken of as an appointment: State, ex rel., v. McCollister, 11 O. 46.

ARTICLE III.

OF THE JUDICIARY.

SECTION 1. The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, in courts of common pleas for each county, in justices of the peace, and in such other courts as the legislature may, from time to time, establish. (*See Const. 1851, Art. IV, § 1.*)

In whom judicial power vested.

See Const. 1851, Art. IV, § 1.

Cited: *Morningstar v. Selby*, 15 O. 345; *Way v. Hillier*, 16 O. 105.

Although the constitution provides that there shall be a supreme court and courts of common pleas, it was not the intention of the framers of the constitution to organize the courts or confer upon them any specific jurisdiction. Their organization, the extent of their powers, the nature of their duties and the manner in which these powers and duties are to be exercised and performed, are all left to be provided for by future legislation: *Ludlow v. Johnson*, 3 O. 553.

"There was a time when it was dangerous for the courts of this state to inquire as to the constitutionality of legislative enactments; and the journals of our legislature will show that at least two judges have been impeached for this high offense. But we have fallen into better times. Supremacy seems to be claimed for the court instead of the general assembly. I am not an advocate of legislative supremacy, nor do I doubt the power and duty of the court, in a proper case, to declare a law unconstitutional. I do not believe, however, that the general assembly will ever pass a law with the intention of violating the constitution; nor can I ever consent to declare one of their acts void on this account unless it is palpably both against the letter and spirit of that instrument. So long as there is any, the least doubt upon the subject, the law must be enforced": Judge Hitchcock in *Lewis v. McElvain*, 16 O. 347; *McCormick v. Alexander*, 2 O. 66.

The legislature has power to enact statutes; the courts have power to construe them. A statute which purports to explain and declare the meaning of a previous statute is valid as to cases which arise after its enactment; but it is invalid as to cases which arose before its enactment and subsequent to the enactment of the statute, the meaning of which it purports to explain: *Schooner v. Dobbie*, 17 O. 125.

To an argument that a law was in contravention of the spirit of the constitution, it was said: "This is rather dangerous ground to tread upon in determining the constitutionality of a law. We may all agree as to the reading of the constitution, and generally as to its meaning; but when we come to talk of its spirit, it is a different matter. There is great danger that we shall conclude that spirit to be in accordance with our preconceived opinions or feelings of what it ought to be": State, ex rel., v. *Cincinnati*, 19 O. 178.

"It is the right and consequently duty of the judicial tribunals to determine whether a legislative act, drawn in question in a suit pending before them, is opposed to the constitution of the United States, or of this state, and if so found, to treat it as a nullity. The presumption is always in favor of the validity of the law; and it is only when manifest assumption of authority and a clear incompatibility between the constitution and the law appear that the judicial power will refuse to execute it. Such interference can never be permitted in a doubtful case": *Railway v. Commissioners*, 1 O. S. 77; see, to same effect, *Railroad v. Trustees*, 1 O. S. 105, and *Loomis v. Spencer*, 1 O. S. 153.

SECTION 2. The supreme court shall consist of three judges, any two of whom shall be a quorum. They shall have original and appellate jurisdiction, both in common law and chancery, in such cases as shall be directed by law; provided, that nothing herein contained shall prevent the general assembly from adding another judge to the supreme court after the term of five years, in which case the judges may divide the state into

The supreme court.

Art.III, § 3. CONSTITUTION OF THE STATE OF OHIO OF 1802.

two circuits, within which any two of the judges may hold a court. (*See Const. 1851, Art. IV, § 2.*)

See Const. 1851, Art. IV, § 2.

Cited and referred to: *Joseph Hunter's Will*, 6 O. 500; *Morningstar v. Selby*, 15 O. 345; *Way v. Hillier*, 16 O. 105; *In re Gregory's Administrator*, 19 O. 357; *Bank v. Dudley*, 27 U. S. (2 Pet.) 492, 1 O. F. D. 233.

Pending a suit in the common pleas, the supreme court has no jurisdiction of a motion to dissolve an injunction therein: *Griffith v. Commissioners*, 20 O. 609.

A special legislative enactment will not confer jurisdiction upon the supreme court to prevent the operation of an injunction allowed by the common pleas, in a case of which that court has taken jurisdiction: *Griffith v. Commissioners*, 20 O. 609.

During a session of the late supreme court in bank, and while there was a vacation of the supreme court on the circuit in any particular county, a single judge might lawfully allow a writ of certiorari to be issued and returnable to the supreme court in that particular county: *Gilliland v. Administrators*, 2 O. S. 223.

While the court will take judicial notice of who were members of the supreme court at a given time, and of the time fixed by law for the commencement of its sessions, it can not take such notice of the duration of any particular session. This fact must appear by evidence: *Gilliland v. Administrators*, 2 O. S. 223.

The common
pleas.

SECTION 3. The several courts of common pleas, shall consist of a president and associate judges. The state shall be divided, by law, into three circuits: there shall be appointed in each circuit a president of the courts, who, during his continuance in office, shall reside therein. There shall be appointed in each county, not more than three nor less than two associate judges, who, during their continuance in office, shall reside therein. The president and associate judges, in their respective counties, any three of whom shall be a quorum, shall compose the court of common pleas; which court shall have common law and chancery jurisdiction in all such cases as shall be directed by law: provided, that nothing herein contained shall be construed to prevent the legislature from increasing the number of circuits and presidents, after the term of five years. (*See Const. 1851, Art. IV, §§ 3, 4, 12.*)

See Const. 1851, Art. IV, §§ 3, 4, 12.

Cited: *Morningstar v. Selby*, 15 O. 345; *Way v. Hillier*, 16 O. 105; *In re Gregory's Administrator*, 19 O. 357; *Cable v. Alvord*, 27 O. S. 654; *Pfeifer v. Green*, 3 O. N. P. 156, 4 O. D. (N.P.) 239

If the judges of the court of common pleas are so interested that a quorum can not sit to take proof of a will, the case can not be certified to the supreme court for taking of proofs: *Joseph Hunter's Will*, 6 O. 499.

The legislature may change the boundary of a county, and when such change places an associate judge within the limits of another county, who does not, within a reasonable time, remove into the limits of the county for which he was appointed, he forfeits his office: *State v. Choate*, 11 O. 511.

Criminal juris-
diction.

SECTION 4. The judges of the supreme court and courts of common pleas, shall have complete criminal jurisdiction in such cases and in such manner, as may be pointed out by law. (*See also Const. 1851, Art. IV, § 4.*)

See, also, Const. 1851, Art. IV, § 4.

Cited and construed: *Joseph Hunter's Will*, 6 O. 499; *State v. Johnson*, 13 O. 176.

Article III is all that can be found in the constitution relative to the power or jurisdiction of the supreme court, or the court of common pleas. Everything, or almost everything upon the subject is left to future legislation. The courts, it is true, are created by the constitution. They are, by the same constitution, made capable of receiving jurisdiction. But this jurisdiction and its extent and manner of exercising it must be prescribed by the law making power: *Way v. Hillier*, 16 O. 105.

The constitution of 1802, gave to the judges of the supreme court power to take jurisdiction of such criminal cases as might be provided for by law; and to exercise such jurisdiction in compliance with the provisions of statutes: *State v. Turner*, W. 20.

SECTION 5. The court of common pleas in each county, shall have jurisdiction of all probate and testamentary matters, granting administration, the appointment of guardians, and such other cases as shall be prescribed by law. (*See Const. 1851, Art. IV, §§ 4, 8.*)

Probate and testamentary.

See Const. 1851, Art. IV, §§ 4, 8.

Cited: *Morningstar v. Selby*, 15 O. 345; *Bank v. Dudley's Lessee*, 27 U. S. (2 Pet.) 492, 1 O. F. D. 233.

All last wills and testaments must be established by probate in the court of common pleas, and until a last will and testament is so established by probate, it can not be received as evidence of any title set up under it: *Lessee v. Blackman*, 8 O. 1.

By our law, a particular tribunal is appointed to receive probate of a will. It does not signify that it is not by law a court of probate; that is, it is the court of common pleas with a probate side to it: *Lessee v. Blackman*, 8 O. 1.

The supreme court and the court of common pleas are by the constitution made capable of receiving jurisdiction. But that jurisdiction, its extent and the manner of exercising it, must be prescribed by the law making power: *Way v. Hillier*, 16 O. 105.

By the constitution of 1802, the court of common pleas had exclusive jurisdiction of all probate matters, and the supreme court had no power of review on such proceedings, by certiorari or otherwise: *Gilliland v. Administrators*, 2 O. S. 223.

The constitution of this state prior to 1851, by its terms, conferred upon the court of common pleas exclusive jurisdiction of all probate matters: *Stafford v. Missionary Association*, 22 O. C. C. 399, 12 O. C. D. 442.

The decree of a probate court in Ohio, involving the exercise of the general jurisdiction of a court of equity, must be considered as coram non judice and void. A decree by such court, on a petition addressed solely to its probate jurisdiction, for the cancellation of a creditor's mortgage, was an attempt to exercise chancery jurisdiction, and utterly void. In so far, therefore, as the decree below went beyond the jurisdiction of a probate court, it is to be treated as void, and in so far as it is within its jurisdiction, it is exclusively so, under § 5, Art. III, of the constitution of 1802, and not subject to revision here: *Gilliland v. Administrators*, 2 O. S. 223.

By the constitution of the state, exclusive jurisdiction in probate and testamentary matters is vested in the courts of common pleas, and the orders of those courts made in the progress of such matters, can not be reviewed in the supreme court upon certiorari: *In re Gregory*, 19 O. 357.

That certiorari would lie to proceedings in the court of common pleas by an executor or administrator to sell the land of a decedent for the payment of his debts, see *Ewing v. Hollister*, 7 O. (pt. 2) 138.

SECTION 6. The judges of the court of common pleas, shall, within their respective counties, have the same powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done. (*See Const. 1851, Art. IV, § 4.*)

Certiorari.

See Const. 1851, Art. IV, § 4.

Cited: *Way v. Hillier*, 16 O. 105.

If we look to the constitution alone, the use of the writ of certiorari would seem to be confined to the removal of causes from a justice of peace to a higher tribunal. But such could not have been the intention of the framers of the constitution: *Dixon v. Cincinnati*, 14 O. 240.

SECTION 7. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the state. The presidents of the courts of common pleas shall, by virtue of their offices, be conservators of the peace in their respective circuits; and the judges of the court of common pleas

Judges, conservators of the peace.

Art.III, § 8. CONSTITUTION OF THE STATE OF OHIO OF 1802.

shall by virtue of their offices, be conservators of the peace in their respective counties.

Cited: Way v. Hillier, 16 O. 105.

Judges, how appointed, term of office, and salaries.

SECTION 8. The judges of the supreme court, the presidents and the associate judges of the courts of common pleas, shall be appointed by a joint ballot of both houses of the general assembly, and shall hold their offices for the term of seven years, if so long they behave well. The judges of the supreme court, and the presidents of the courts of common pleas shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the authority of this state or the United States. (*See Const. 1851, Art. IV, §§ 12, 14.*)

See Const. 1851, Art. IV, §§ 12, 14.

Cited: State, ex rel., v. McCollister, 11 O. 46.

The legislature had power to fill an existing vacancy, or one which was likely to happen before the next general assembly: State v. Choate, 11 O. 511.

While the power of appointing judges was vested in both houses of the general assembly, the constitution did not prescribe the particular manner in which it was to be exercised except that it was to be by joint ballot. This question was left by the constitution to be regulated by the legislative authorities, and it was regulated by the joint rules of the two houses: State, ex rel., v. Moffitt, 5 O. 358.

A law which authorized any body other than the general assembly to appoint a judge for any period of time beyond the close of the next session of the legislature, would violate the constitution: State, ex rel., v. Moffitt, 5 O. 358.

Since the constitution did not provide the evidence by which an individual might prove his appointment, and since it did not prescribe the oath of office, the legislature had power to make provision therefor: State, ex rel., v. Moffitt, 5 O. 358.

Clerks of courts; term, etc.; may be removed.

SECTION 9. Each court shall appoint its own clerk for the term of seven years; but no person shall be appointed clerk, except *pro tempore*, who shall not produce to the court, appointing him, a certificate from a majority of the judges of the supreme court, that they judge him to be well qualified to execute the duties of the office of clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behavior, at any time, by the judges of the respective courts. (*See Const. 1851, Art. IV, § 16.*)

See Const. 1851, Art. IV, § 16.

Cited: State v. McCollister, 11 O. 46.

The appointment of a clerk of the court of common pleas must be by the act of the court, made in open court and entered on the minutes; and the announcement from the court, in session, that A. B. is appointed clerk vests no such right as precludes the court from subsequently refusing to have the appointment entered on the minutes: State v. Este, 7 O. 134.

Terms of courts.

SECTION 10. The supreme court shall be held once a year, in each county, and the courts of common pleas shall be holden in each county, at such times and places as shall be prescribed by law.

Under the constitution of 1802, the supreme court had power to make an order in one county for a struck jury in a case which was to be tried in another county: Seeley v. Blair, 6 O. 448.

SECTION 11. A competent number of justices of the peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office three years, whose powers and duties shall, from time to time, be regulated and defined by law. (*See Const. 1851, Art. IV, § 9.*)

Justices of the peace.

See Const. 1851, Art. IV, § 9.

SECTION 12. The style of all process shall be, "The State of Ohio:" all prosecutions shall be carried on in the name and by the authority of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the same." (*See Const. 1851, Art. IV, § 20.*)

Style of process; prosecutions and indictments.

See Const. 1851, Art. IV, § 20.

Under the common law there were various terminations of indictments, depending on the time and character of the crime charge. Upon the use of the proper termination, the validity of the indictment depended. Among the indistinguishable distinctions, the use of the singular instead of the plural, in referring to the statutes was sufficient to invalidate an indictment. The manifest object of this constitutional provision was to wipe out all such controversies by providing a sufficient and uniform conclusion to the allegations of fact constituting the charge: *State v. Stapely*, 19 O. D. (N.P.) 110.

ARTICLE IV.

OF ELECTIONS AND ELECTORS.

SECTION 1. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the state one year next preceding the election, and who have paid or are charged with a state or county tax, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or district in which he shall actually reside at the time of the election. (*See Const. 1851, Art. V, § 1.*)

Who may vote.

See Const. 1851, Art. V, § 1.

Under the constitution and laws of Ohio three descriptions of persons were enumerated; whites, blacks and mulattoes; the two latter class being under disability. The mulatto was the middle term between the extremes, or the offspring of a white and a black. All nearer white than black, or of a grade between the mulatto and white, were entitled to enjoy every political and social privilege of the white citizen: *Gray v. State*, 4 O. 353; *Jeffries v. Ankeny*, 11 O. 372; *Williamson v. School Directors*, W. 578.

A person, the offspring of a white man and a half-breed Indian woman, is a lawful voter: *Jeffries v. Ankeny*, 11 O. 372.

An instruction that under this provision a man who had any negro blood was not a legal voter, was erroneous: *Thacker v. Hawk*, 11 O. 376.

Children who were part white, part negro and part Indian, but more than one-half white, were entitled to the benefit of the common school fund: *Lane v. Baker*, 12 O. 237 [following *Gray v. State*, 4 O. 353]; see, upon this same question, *State, ex rel., v. Cincinnati*, 19 O. 178.

The court said, in obiter, that under this provision a negro might be chosen by negro votes as school director of a school for negro children: *State, ex rel., v. Cincinnati*, 19 O. 178.

Children whose father was three-fourths white and whose mother was white, were held to be white children within the meaning of the school laws: *Williams v. School Directors*, W. 578.

Under the constitution of 1802 it was repeatedly held by the supreme court of the state that men having an admixture of African blood, with a preponderance of white blood, were white men within its meaning, and had the same right to vote as persons of pure white blood: *Monroe v. Collins*, 17 O. S. 665.

Persons having a mixture of African blood, but a preponderance of white blood, or being more white than black, and being otherwise qualified, were, by the settled construction of this section, entitled to enjoy the right of an elector. No change was made in this respect by the corresponding section of the constitution of 1851. The same persons being otherwise qualified, are not to be excluded on account of color,

Art.IV, § 2. CONSTITUTION OF THE STATE OF OHIO OF 1802.

but are entitled, under the present constitution, to vote at all elections: *Anderson v. Millikin*, 9 O. S. 568.

There was said to be no substantial difference between this provision and Art. V, § 1, of the Ohio constitution of 1851: *State, ex rel., v. Columbus*, 9 O. C. C. 134, 6 O. C. D. 36 [affirmed, without report, in *Mills v. City Board of Elections*, 54 O. S. 631].

By ballot.

SECTION 2. All elections shall be by ballot. (*See Const. 1851, Art. V, § 2.*)

See Const. 1851, Art. V, § 2.

Voters, when privileged from arrest.

SECTION 3. Electors shall, in all cases except treason, felony or breach of the peace, be privileged from arrest, during their attendance at elections, and in going to and returning from the same. (*See Const. 1851, Art. V, § 3.*)

See Const. 1851, Art. V, § 3.

Forfeiture of elective franchise.

SECTION 4. The legislature shall have full power to exclude from the privilege of electing, or being elected, any person convicted of bribery, perjury, or any other infamous crime. (*See Const. 1851, Art. V, § 4.*)

See Const. 1851, Art. V, § 4.

Who may vote.

SECTION 5. Nothing contained in this article shall be so construed as to prevent white male persons, above the age of twenty-one years, who are compelled to labor on the roads of their respective townships or counties, and who have resided one year in the state, from having the right of an elector. (*See Const. 1851, Art. V, § 1.*)

See Const. 1851, Art. V, § 1.

Persons having a mixture of African blood, but a preponderance of white blood, or being more white than black, and being otherwise qualified, were, by the settled construction of § 1, of Art. IV, entitled to enjoy the right of an elector. No change was made in this respect by the corresponding section of the constitution of 1851. The same persons being otherwise qualified, are not to be excluded on account of color, but are entitled, under the present constitution, to vote at all elections: *Anderson v. Millikin*, 9 O. S. 568.

ARTICLE V.

OF THE MILITIA OFFICERS.

(*See Const. 1851, Art. IX.*)

How officers elected.

SECTION 1. Captains and subalterns in the militia, shall be elected by those persons, in their respective company districts, subject to military duty.

Cited: *State v. McCollister*, 11 O. 46.

Same subject.

SECTION 2. Majors shall be elected by the captains and subalterns of the battalion.

Cited: *State v. McCollister*, 11 O. 46.

Same subject.

SECTION 3. Colonels shall be elected by the majors, captains and subalterns of the regiment.

Cited: *State v. McCollister*, 11 O. 46.

Same subject.

SECTION 4. Brigadiers general shall be elected by the commissioned officers of their respective brigades.

Cited: *State v. McCollister*, 11 O. 46.

SECTION 5. Majors general and quartermasters general shall be appointed by joint ballot of both houses of the legislature. Same subject.

Cited: State v. McCollister, 11 O. 46.

SECTION 6. The governor shall appoint the adjutant general. The majors general shall appoint their aids and other division staff officers. The brigadiers general shall appoint their brigade majors and other brigade staff officers. The commanding officers of regiments shall appoint their adjutants, quartermasters and others regimental staff officers; and the captains and subalterns shall appoint their non-commissioned officers and musicians. Same subject.

Cited: State v. McCollister, 11 O. 46.

SECTION 7. The captains and subalterns of the artillery and cavalry, shall be elected by the persons enrolled in their respective corps; and the majors and colonels shall be appointed in such manner as shall be directed by law. The colonels shall appoint their regimental staff; and the captains and subalterns their non-commissioned officers and musicians. Same subject.

ARTICLE VI.

OF CIVIL OFFICERS.

SECTION 1. There shall be elected in each county, one sheriff and one coroner, by the citizens thereof, who are qualified to vote for members of the assembly: they shall be elected at the time and place of holding elections for members of assembly: they shall continue in office two years, if they shall so long behave well, and until successors be chosen and duly qualified: provided, that no person shall be eligible as sheriff for a longer term than four years in any term of six years. (*See Const. 1851, Art. X, §§ 1-3.*) Sheriff and coroner.

Const. 1851, Art. X, §§ 1-3.

Cited: State v. McCollister, 11 O. 46.

This section prescribes the time at which sheriffs shall be elected, and by whom, but does not prescribe the qualifications of the individual who may be elected; nor is anything required of him before entering upon the duties of his office except that, like all other persons elected or appointed to office of trust or profit under the authority of the state, he shall take an oath of office. The fact that the sheriff is an officer known to the constitution and that the time, place, and manner of his election is prescribed in that instrument, does not prevent the legislature from enacting a statute to the effect that the sheriff is to remain in office until his successor is elected and qualified: *Crooks v. State*, 7 O. (pt. 2) 221.

Since the constitution is silent as to the form of the oath of office and as to the evidence of the right to hold office, the legislature may prescribe the form of the oath of office and may provide for issuing commissions to the persons entitled to such office: *State, ex rel., v. Moffitt*, 5 O. 358.

SECTION 2. The state treasurer and auditor shall be triennially appointed by a joint ballot of both houses of the legislature. State treasurer and auditor.

Cited: State v. McCollister, 11 O. 46.

SECTION 3. All town and township officers shall be chosen annually, by the inhabitants thereof, duly qualified to vote for members of assembly, at such time and place as may be directed by law. (*See Const. 1851, Art. X, § 1.*) Town and township officers.

See Const. 1851, Art. X, § 1.

Cited: State v. McCollister, 11 O. 46.

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Other officers.

SECTION 4. The appointment of all civil officers, not otherwise directed by this constitution, shall be made in such manner as may be directed by law.

ARTICLE VII.

OFFICIAL OATHS.

Oath of officers.

SECTION 1. Every person who shall be chosen or appointed to any office of trust or profit, under the authority of this state, shall, before the entering on the execution thereof, take an oath or affirmation to support the constitution of the United States and of this state, and also an oath of office. (*See Const. 1851, Art. XV, § 7.*)

See Const. 1851, Art. XV, § 7.

BRIBERY AT ELECTIONS.

Bribery at elections.

SECTION 2. Any elector, who shall receive any gift or reward for his vote, in meat, drink, money or otherwise, shall suffer such punishment as the law shall direct; and any person who shall, directly or indirectly, give, promise, or bestow any such reward, to be elected, shall thereby be rendered incapable, for two years, to serve in the office for which he was elected, and be subject to such other punishment as shall be directed by law.

OF NEW COUNTIES.

Extent of new counties and representation therein.

SECTION 3. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to less contents than four hundred square miles; nor shall any county be laid off, of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of representation. (*See Const. 1851, Art. II, § 30.*)

See Const. 1851, Art. II, § 30.

Cited: *Newton v. Commissioners*, 100 U. S. (10 Otto) 548, 4 O. F. D. 555.

Where the legislature has erected a new county out of territory formerly belonging to other counties, and to compensate such counties for the loss of territory occasioned by the erection of the new county, has added territory to them from adjoining counties, it is competent for the legislature to provide that the county receiving the accession of territory shall pay an equitable proportion of the indebtedness of the county from which such territory has been taken; and the provision of the statute creating the county of Auglaize, which requires Allen county to pay a portion of the debts of Putnam county, is valid: *Commissioners v. Auditor*, 1 O. S. 322.

Under the constitution of 1802 it was always supposed that the legislature had power to erect new counties out of those already in existence, only limited by the provision that required all counties to be of a certain extent of territory; and as a consequence of the exercise of this power, justice frequently required an adjustment of the property and liabilities of the counties out of which the new county was formed: *Commissioners v. Auditor*, 1 O. S. 322.

This clause applied to any new county erected after the adoption of the constitution by the convention: *State, ex rel., v. Dudley*, 1 O. S. 437.

OF THE SEAT OF GOVERNMENT.

Seat of government.

SECTION 4. Chillicothe shall be the seat of government until the year one thousand eight hundred and eight. No money

shall be raised until the year one thousand eight hundred and nine, by the legislature of this state, for the purpose of erecting buildings for the accommodation of the legislature. (*See Const. 1851, Art. XV, § 1.*)

See Const. 1851, Art. XV, § 1.

OF AMENDMENTS TO THE CONSTITUTION.

SECTION 5. That after the year one thousand eight hundred and six, whenever two-thirds of the general assembly shall think it necessary to amend or change this constitution, they shall recommend to the electors, at the next election for members to the general assembly, to vote for or against a convention; and if it shall appear that a majority of the citizens of the state, voting for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there be in the general assembly; to be chosen in the same manner, at the same place, and by the same electors that choose the general assembly; who shall meet within three months after the said election, for the purpose of revising, amending or changing the constitution. But no alteration of this constitution shall ever take place, so as to introduce slavery or involuntary servitude into this state. (*See Const. 1851, Art. XVI, § 2.*)

Of amendments to the constitution.

See Const. 1851, Art. XVI, § 2.

BOUNDARIES OF THE STATE.

SECTION 6. That the limits and boundaries of this state be ascertained, it is declared, that they are, as hereafter mentioned; that is to say: bounded on the east by the Pennsylvania line; on the south by the Ohio river to the mouth of the Great Miami river; on the west by the line drawn due north from the mouth of the Great Miami, aforesaid; and on the north by an east and west line drawn through the southerly extreme of Lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami until it shall intersect Lake Erie or the territorial line, and thence with the same, through Lake Erie, to the Pennsylvania line aforesaid; provided always, and it is hereby fully understood and declared by this convention, that if the southerly bend or extreme of Lake Michigan should extend so far south, that a line drawn due east from it should not intersect Lake Erie, or if it should intersect the said Lake Erie, east of the mouth of the Miami river of the lake, then and in that case, with the assent of the congress of the United States, the northern boundary of this state shall be established by, and extended to, a direct line running from the southern extremity of Lake Michigan to the most northerly cape of the Miami Bay, after intersecting the due north line from the mouth of the great Miami river, after intersecting the due north line from the mouth of the great Miami river as aforesaid, thence northeast to the territorial line, and, by the said territorial line, to the Pennsylvania line.

Boundaries of the state.

When the constitution of 1802 was formed, the latitude of the southerly extremity of Lake Michigan was uncertain; and was supposed to be much farther north than in fact it was. The boundaries of Ohio, as prescribed in the enabling act passed by congress on April 30, 1802 (Swan's Land Laws, 221) in § 2 of such act, was "on

Art.VIII, § 1. CONSTITUTION OF THE STATE OF OHIO OF 1802.

the east by the Pennsylvania line, on the south by the Ohio river to the mouth of the Great Miami, on the west by a line drawn due north from the mouth of the Great Miami aforesaid, and on the north by an east and west line drawn through the southerly extreme of Lake Michigan running east after intersecting the due north line aforesaid from the mouth of the Great Miami, until it shall intersect Lake Erie or the territorial line, and thence with the same through Lake Erie to the Pennsylvania line aforesaid."

The provision in this section of the Ohio constitution was probably inserted because it was realized that the latitude of the southern extreme of Lake Michigan was uncertain. See discussion in Daniels v. Stevens, 19 O. 222.

As this territory became settled a sharp dispute between Ohio and Michigan arose, which was finally settled by an act of congress passed June 15, 1836, which fixed the northern boundary of Ohio at a line drawn directly from the southern extreme of Lake Michigan to the most northerly cape in Maumee bay; thence intersecting the territorial line; and thence with the same to the Pennsylvania line. This statute required Michigan to assent thereto as a condition precedent to its admission to the Union. Michigan assented to such provision December 15, 1836; and Michigan was admitted to the Union January 26, 1837. See discussion in Myers v. Bank, 20 O. 283.

Service of summons upon one who resided in the strip of territory in dispute at a time when it was in fact a part of Michigan, did not give jurisdiction to a court of Ohio: Daniels v. Stevens, 19 O. 222.

A banking corporation which was engaged in business in the territory in dispute between Ohio and Michigan, and which was incorporated by the territory of Michigan, could not be regarded as an Ohio corporation after such territory was awarded to Ohio: Myers v. Bank, 20 O. 283.

ARTICLE VIII.

BILL OF RIGHTS.

That the general, great and essential principles of liberty and free government may be recognized and forever unalterably established, we declare,

Right of freedom, and to establish and alter government.

SECTION 1. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights; amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; and every free republican government, being founded on their sole authority, and organized for the great purpose of protecting their rights and liberties, and securing their independence: to effect these ends they have at all times a complete power to alter, reform or abolish their government, whenever they may deem it necessary. (*See Const. 1851, Art. I, §§ 1, 2.*)

See Const. 1851, Art. I, §§ 1, 2.

The people have the undoubted right, under this constitution, to delegate just as much or just as little, political power with which they are invested, as they see proper, and to such agents or departments of government as they see fit to delegate it. To the constitution we must look for the manner and extent of this delegation; and from that instrument alone must every department of the government derive its authority to exercise any portion of this political power: Railroad v. Commissioners, 1 O. S. 77.

Of slavery and involuntary servitude.

SECTION 2. There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, or female person arrived at the age of eighteen years, be held to serve any person as a servant, under the pretense of indenture or otherwise, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a

bona fide consideration received, or to be received, for their service, except as before excepted. Nor shall any indenture of any negro or mulatto, hereafter made and executed out of the state, or if made in the state, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships. (*See Const. 1851, Art. I, § 6.*)

See Const. 1851, Art. I, § 6.

SECTION 3. That all men have a natural and indefeasible right to worship Almighty God, according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required, as a qualification, to any office of trust or profit. But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience. (*See Const. 1851, Art. I, § 7.*)

Of the rights of conscience; the necessity of religion and knowledge.

See Const. 1851, Art. I, § 7.

Cited: *Shryock v. Railroad*, 6 O. L. R. 19 (railroad commission).

Construed in connection with the ordinance of 1787 and with Art. I, § 7, of the constitution of 1851: *Burton v. Board of Education*, 5 O. N. P. (N.S.) 294, 18 O. D. (N.P.) 67.

The ordinance of 1787 announced, as the policy of the northwest territory, that, "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." The constitution of 1802 reasserted this policy and emphasizes it by introducing the word "especially" before "necessary." The constitution of 1851, § 7, Art. I, in a similar, but somewhat less felicitous language, made the same statement: *Theological Seminary v. Little*, 2 O. C. C. (N.S.) 540, 15 O. C. D. 609 [affirmed, *Little v. Theological Seminary*, 72 O. S. 417].

The prohibition of "common labor" upon the Sabbath, in the act for the prevention of immoral practices, embraces the business of "trading, bartering, selling, or buying any goods, wares or merchandise": *Cincinnati v. Rice*, 15 O. 225.

The ordinance of the city of Cincinnati, prohibiting such "trading," etc., on Sunday, is void as to those who conscientiously do observe the seventh day of the week as the Sabbath: *Cincinnati v. Rice*, 15 O. 225.

The constitution of 1802 did not prevent the general assembly from creating separate school districts for colored children: *State v. Cincinnati*, 19 O. 178.

This section did not prevent inquiry into the religious belief of religious corporations for the purpose of determining their property rights in case of controversy in factions of the same religious denomination: *Kisor v. Stancifer*, W. 323.

The court agreed in *Easterday v. Kilborn*, W. 345, that a witness who believed in the existence of God though only as manifest in nature; who believed that he was as much obliged to tell the truth when not under oath as when under oath; and who believed in future rewards and punishments in this life only, and not in any future life; and that in case of wrong doing his conscience would punish him, was competent; and the court divided evenly on the question whether his religious belief could in any event make him incompetent as a witness.

From the earliest period of the history of the state to the adoption of the present constitution (1851), it was the policy of the state to exempt from taxation both the school lands and lands set apart for religious purposes. This legislation was in compliance with that clause of the old constitution of the state (1802) which required that schools and means of instruction should be forever encouraged by legislative provision: *Martindill v. Sanger*, 11 O. D. (N.P.) 727.

Art. VIII, § 4. CONSTITUTION OF THE STATE OF OHIO OF 1802.

Of the inviolability of private property.

SECTION 4. Private property ought and shall ever be held inviolate, but always subservient to the public welfare, provided a compensation in money be made to the owner. (*See Const. 1851, Art. I, § 19, and notes.*)

See Const. 1851, Art. I, § 19, and notes.

- I. Cited.
- II. Protection to private property.
- III. Public purpose.
- IV. Estate and interest taken.

- V. Compensation.
 - A. Nature.
 - B. Amount.
 - C. Method of determining amount.
- VI. Application to taxation.

I. CITED.

Symonds v. Cincinnati, 14 O. 147; State, ex rel., v. Barrett, 22 O. C. C. 104, 12 O. C. D. 231; Bauman v. Ross, 167 U. S. 548; United States v. In-Lots, Fed. Cases 15,441a, 4 O. F. D. 268.

II. PROTECTION TO PRIVATE PROPERTY.

The policy of the state has always been, since its organization, to protect the right of the private owner to his property: Merrill v. Currier, 2 O. N. P. 52, 3 O. D. (N.P.) 153.

Under the constitution of 1802, the legislature had power to provide that the realty of a decedent descended, subject to his debts, and that it might be sold for the payment thereof: Ludlow v. Johnson, 3 O. 553.

Under the constitution of 1802, the power of eminent domain was almost unrestricted: Cleveland v. Railway, 93 Fed. 113, 12 O. F. D. 459.

The power of the legislature in the exercise of eminent domain applied to property of every kind, corporeal or incorporeal, irrespective of the title by which such property was acquired: Cleveland v. Railway, 93 Fed. 113, 12 O. F. D. 459.

In order to appropriate land by eminent domain the legislature must first declare by law that the public welfare requires such appropriation; it must provide a method of determining the value of the land appropriated, and must provide for payment therefor: McArthur v. Kelly, 5 O. 139.

So far as the law authorizes commissioners to invade private rights, as to take what may be necessary for canal navigation, and to this extent, authority is conferred by the constitution, provided a compensation be paid in money to the owner. The principle is founded in the superior claim of a whole community over an individual citizen, but then, in those cases only where private property is wanted for a public use or demanded by public welfare: Buckingham v. Smith, 10 O. 288.

The declaration by the legislature that a river is navigable can not deprive the riparian owners of the right to make use of the waters thereof if such river is not in fact navigable and if compensation has not been made to them: Walker v. Board of Public Works, 16 O. 540.

It is not necessary that the exercise of the power of eminent domain be made to depend on the consent or co-operation of the owner of the property which is appropriated: Mercer v. McWilliams, W. 132.

III. PUBLIC PURPOSE.

The power to appropriate property for public uses, for the purpose of promoting the general welfare is inherent in every government, but this power must be exercised in cases and for objects strictly public: Cooper v. Williams, 4 O. 253.

A canal is such a public work that private property may be taken in constructing it: Cooper v. Williams, 4 O. 253; Willyard v. Hamilton, 7 O. (pt. 2) 111.

The canal commissioners are authorized by law to take water enough from a stream for canal navigation, but not for the purpose of creating hydraulic power to sell or lease on behalf of the state: Buckingham v. State, 10 O. 288; see, also, Cooper v. Williams, 5 O. 391.

The act of the general assembly for constructing canals, authorizing the taking of materials for that purpose, is constitutional, and extends to taking materials for repairs: Bates v. Cooper, 5 O. 115.

The erection of a toll bridge is a public use for which land may be condemned: Young v. Buckingham, 5 O. 485.

The care of public streets is such a public work that private property may be taken in their construction: Hickox v. Cleveland, 8 O. 543.

Private property may be taken in the construction of a turnpike: Kemper v. Turnpike Co., 11 O. 392.

If damages have been assessed for land over which a turnpike passes, the owner of such land can not thereafter recover from one who, acting under the direction of the turnpike company, has cut down timber

within the line of such road and has sold it: *Prather v. Ellison*, 10 O. 396.

Authority to construct a toll road to a width not exceeding one hundred feet does not authorize an appropriation of land outside of such limits for the purpose of constructing a tollhouse: *Kemper v. Turnpike Co.*, 11 O. 392.

IV. ESTATE AND INTEREST TAKEN.

Under the constitution of 1802, the legislature, in the exercise of the right of eminent domain, possessed the power to appropriate to public use the fee simple title to lands, where, in its judgment, the public necessities required it; and the title acquired by the state by the appropriation of lands for canal purposes, under the eighth section of the act of February 4, 1825 (2 Chase, 1472), was an absolute estate in fee: *Malone v. Toledo*, 34 O. S. 541.

Where land in a town has been deducted as a public square and used as such, the legislature can not authorize the town corporation to change its character: *Le Clercq v. Trustees*, 7 O. 217.

In the absence of specific statutory authority, a railway company which has once located its route and constructed its road, can not relocate its route and appropriate private property therefor: *Moorhead v. Railway*, 17 O. 340.

It was said in *Corwin v. Cowan*, 12 O. S. 629, to be doubtful whether the state could take an absolute fee simple and then sell the property thus taken to other persons to use as their own private property; but in this case, under the law then in force, payment for taking such land was in the form of benefits conferred by the use to which it was put (see V, B, this section).

V. COMPENSATION.

A. Nature. The term "compensation" imports that a wrong or injury has been inflicted which must be redressed in money. Money must be paid to the extent of the injury, whether more or less than the value of the property; and then, in our view, is the language of the constitution satisfied: *Symonds v. Cincinnati*, 14 O. 148.

Under this section compensation is necessary: *McArthur v. Kelly*, 5 O. 140; *Foote v. Cincinnati*, 11 O. 408.

A statute which provides for the appropriation of private property, but makes no provision for payment therefor, is unconstitutional: *Foote v. Cincinnati*, 11 O. 408.

The legislature has no power to declare navigable a river which is not navigable in fact; and thus to deprive the riparian owners of their right to make use of its water without rendering them compensation for such right: *Walker v. Board of Public Works*, 16 O. 540.

Provision for determining and paying damages is said to be compensation, whether the owner is in fact paid or not: *Mercer v. McWilliams*, W. 132.

This provision, together with the corresponding provision under the constitution of the United States, requires compensation to be made to the person whose property has been appropriated: *Cooper v. Williams*, 4 O. 253 [affirmed on bill of review, *Cooper v. Williams*, 5 O. 391].

The injuries which are caused by grading and leveling streets are not protected by this constitutional provision, although the legislature may provide for compensation therefor: *Hickox v. Cleveland*, 8 O. 543.

B. Amount. The benefits conferred by the purpose for which the land is appropriated may be deducted from the value of the land which is appropriated: *Symonds v. Cincinnati*, 14 O. 147; *Brown v. Cincinnati*, 14 O. 541.

C. Method of determining amount. This section made no provision as to how compensation should be determined: *Telephone Co. v. Cush*, 14 O. D. (N.P.) 148.

Under § 4, Art. VIII, of the constitution of 1802, no limitation was imposed as to the character of the tribunal or person that the law should clothe with authority to take such property for the public welfare, nor was the time prescribed when compensation should be made for property taken. In this and other respects the right of eminent domain is abridged by the provisions of the constitution of 1851: *Wagner v. Railway*, 38 O. S. 32.

The owner of property had no constitutional right to a jury to assess his compensation, since this was not recognized at common law either in England or in this country prior to the adaptation of this constitution as a proper case for a jury: *Willyard v. Hamilton*, 7 O. (pt. 2) 111.

Under the provision of the constitution of 1802, that private property shall be held inviolate, but subservient to the public welfare, provided compensation in money be made the owner, it was held that

compensation was not required to be first made, and that it might be taken for such use when provision for the assessment and payment is made, whether the owner was actually paid or not, it being sufficient if provision be made by law for compensating him; also benefits conferred might be set off against the value of the property so taken. No jury being required, it was the practice, authorized by statute, to have the compensation determined by three commissioners who were sent out to view the premises. Manifest abuses arose under this system of appropriating private property, which were remedied in the constitution of 1851: *Railroad v. Bolen*, 76 O. S. 376.

Under this section a provision for compensation was sufficient without provision for compensation in advance: *Bates v. Cooper*, 5 O. 115.

VI. APPLICATION TO TAXATION.

In Ohio this clause has been regarded as applicable to taxation. It did not forbid assessments levied for public improvements upon property benefited thereby and no appropriation to such benefits: *Scovill v. Cleveland*, 1 O. S. 126.

This section does not prevent the legislature from requiring property owners to construct sidewalks in front of their lands, or to charge them with the cost thereof if they fail to construct them: *Bonsall v. Lebanon*, 19 O. 418.

This section did not prevent the legislature from authorizing a public corporation or a public quasi corporation to subscribe for stock in railroads or other corporation for public improvement, and to pay therefor by taxation: *Railroad v. Commissioners*, 1 O. S. 77; *Railway v. Township Trustees*, 1 O. S. 105. Contra: *Griffith v. Commissioners*, 20 O. 609.

Search warrants,
and general war-
rants.

SECTION 5. That the people shall be secure in their persons, houses, papers and possessions, from unwarrantable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed, or to seize any person or persons not named, whose offenses are not particularly described, and without oath or affirmation, are dangerous to liberty, and shall not be granted. (*See Const. 1851, Art. I, § 14.*)

See Const. 1851, Art. I, § 14.

This section was compared with Art. I, § 14, of the constitution of 1851: *Eichenlaub v. State*, 36 O. S. 140.

It will not justify searching a man's house that one has been arrested there, having in his possession counterfeit paper. Existence on the premises of guilty implements, or evidences of crime, will warrant a search, but if not found there, the jurisdiction fails. Circumstances of reasonable suspicion may be proved in mitigation: *Simpson v. McCaffrey*, 13 O. 508.

Of the freedom
of speech and
the press; of
libels.

SECTION 6. That the printing presses shall be open and free to every citizen who wishes to examine the proceedings of any branch of government, or the conduct of any public officer; and no law shall ever restrain the right thereof. Every citizen has an indisputable right to speak, write or print, upon any subject, as he thinks proper, being liable for the abuse of that liberty. In prosecutions for any publication respecting the official conduct of men in a public capacity, or where the matter published is proper for public information, the truth thereof may always be given in evidence; and in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases. (*See Const. 1851, Art. I, § 11.*)

See Const. 1851, Art. I, § 11.

Construed: *Montgomery v. State*, 11 O. 424.

This section does not make the jury the judges of the law in criminal cases, but it only authorizes them to pass upon the facts under the direction of court as in other cases: *Montgomery v. State*, 11 O. 424.

SECTION 7. That all courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered, without denial or delay. (*See Const. 1851, Art. I, § 16.*)

Of redress in courts.

See Const. 1851, Art. I, § 16.

Cited: *Yensen v. State*, 7 O. N. P. 18, 9 O. D. (N.P.) 168.

SECTION 8. That the right of trial by jury shall be inviolate. (*See Const. 1851, Art. I, § 5.*)

Trial by jury.

See Const. 1851, Art. I, § 5.

This section, together with the ordinance of 1787, were intended to guard the right of trial by jury; but it was never intended to secure a jury in every kind of case. The right which was secured was the right as it existed in the common law; and it was not intended to restrict the future development of our jurisprudence so as to prevent proceedings in equity or other proceedings in which trial by jury was not customary or practicable: *Cochran v. Loring*, 17 O. 409.

It will be observed that the right of trial by jury was not introduced into our system of jurisprudence for the first time by this section, although this was the first constitution of the state. The right appears to be therein recognized as pre-existing, and the purpose of the provision would seem to be to preserve the right, whatever its nature and scope might be, inviolate: *Rechner v. Warner*, 22 O. S. 275.

The section in the present constitution (Art. I, § 5, constitution of 1851) preserving inviolate the right of trial by jury, is found in the constitution of 1802, and in the same words: *Turnpike Co. v. Parks*, 50 O. S. 568.

This section did not render unconstitutional statutes which provide for ascertaining the value of improvements under the occupying claimant law by commissioners instead of by a jury: *Hunt v. McMahon*, 5 O. 132; *Klever v. Seawall*, 65 Fed. 393, 12 C. C. A. 661, 9 O. F. D. 95. *Contra: Bank v. Dudley*, 27 U. S. (2 Pet.) 492, 1 O. F. D. 233.

This section did not require the use of a jury in determining the compensation to be made for property appropriated for public use; such question having been determined at England law by commissioners, and not by a jury: *Willyard v. Hamilton*, 7 O. (pt. 2) 111.

The validity of statutes which provided for determining the value of the land appropriated without the intervention of a jury was assumed: *Hogg v. Canal & Mfg. Co.*, 5 O. 410; *Symonds v. Cincinnati*, 14 O. 147; *Cooper v. Williams*, 4 O. 253; *Young v. Buckingham*, 5 O. 485.

If a grading and leveling of public streets has injured private property, it is not necessary that the amount of such injury should be ascertained by a jury: *Hickox v. Cleveland*, 8 O. 544.

From time immemorial, the practice of assessing damages, by commissioners, has been used in the United States. And yet, notwithstanding so many have revised and changed their constitutions, it has never been thought necessary to make the guarantee of a jury trial more comprehensive in its meaning than it was before supposed to be: *Hickox v. Cleveland*, 8 O. 544.

SECTION 9. That no power of suspending laws shall be exercised, unless by the legislature. (*See Const. 1851, Art. I, § 18.*)

Suspension of laws.

See Const. 1851, Art. I, § 18.

Under the constitution of 1802, Art. VII, § 9, the phraseology of the language used is but slightly different from the constitution of 1851, Art. I, § 18: *Ex parte Mullaney*, 8 O. N. P. 49, 10 O. D. (N.P.) 419.

SECTION 10. That no person, arrested or confined in jail, shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment or impeachment. (*See Const. 1851, Art. I, § 10.*)

Of prisoners, and charges against them.

See Const. 1851, Art. I, § 10.

No person in Ohio can be held to answer, upon trial, for a crime, except it be by the indictment or presentment of a grand jury, and he has the right by the same organic law to demand the nature and cause of the accusation against him. He has the right to require such accusations to be embodied in a methodical and legal form, with time, place and circumstances, otherwise he will be unable to prepare his defense to resist the charge: *Grummond v. State*, 10 O. 510.

Art.VIII, § 11. CONSTITUTION OF THE STATE OF OHIO OF 1802.

In Campbell's case (Tappan, 29, 33), decided in 1816, an information was filed, and it was urged that, notwithstanding the above language of the constitution of 1802, the common law power to proceed by information still existed. But the court held that the constitution (of 1802) prohibited proceedings by information. This seems to have been the only attempt to proceed by information in any criminal case under that constitution, unless we except contempts of court in which the necessity for any other proceeding than one of a summary character does not exist. They are indeed in legal strictness, not criminal cases: *Eichenlaub v. State*, 36 O. S. 140.

The grand jury system has been recognized and in force during the entire existence of the state, and legislation thereupon dates back to the very first volume of Ohio laws under the constitution of 1802: *State v. Stichtenoth*, 8 O. N. P. (N.S.) 297, 19 O. D. (N.P.) 623.

For right of prosecutor to be present during the session of the grand jury, see *State v. Stichtenoth*, 8 O. N. P. (N.S.) 297, 19 O. D. (N.P.) 623.

It is true, for offenses strictly criminal or infamous, punishment can only be inflicted through the medium of an indictment or presentment of the grand jury [constitution of Ohio, Art. VIII, § 10]. There are, however, many offenses, made so by statute, which are but quasi criminal, and where the legislature may direct the mode of redress, untrammelled by this constitutional provision. Such is Sabbath breaking, selling spirituous liquors on Sunday, and the disturbance of religious meetings, with many others. *Swan's Stat.* 255, 256. Long acquiescence in these enactments goes far to show the construction which has been placed by all on the constitution, and that there may be many offenses, though decidedly immoral and mischievous in their tendencies, that are not crimes, but at most only quasi criminal. Of such, jurisdiction may be given to a justice of the peace or the mayor of an incorporated town: *Markle v. Akron*, 14 O. 586.

Of the trial of
accused persons,
and their rights.

SECTION 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county or district in which the offense shall have been committed; and shall not be compelled to give evidence against himself, nor shall he be twice put in jeopardy for the same offense. (*See Const. 1851, Art. I, § 10.*)

See Const. 1851, Art. I, § 10.

No person in Ohio can be held to answer upon trial, for a crime, except it be by indictment or presentment by grand jury, and he has the right, by the same organic law, to demand the nature and cause of the accusation against him. He has the right to require such accusations to be embodied in a methodical and legal form, with time, place and circumstances, otherwise he will be unable to prepare his defense to resist the charge: *Grummond v. State*, 10 O. 510.

On the trial of an indictment for a criminal offense, and at the return of the verdict, it is the right of the accused to be present, and, if prevented by imprisonment, or other improper means, he is entitled to a new trial: *Rose v. State*, 20 O. 31.

In criminal cases, the verdict should be received in the presence of the prisoner, that he may have the jury polled: *Sargent v. State*, 11 O. 472.

After the jury is impaneled and sworn, if a nolle prosequi be entered by the prosecuting attorney, with leave of the court, and without the consent of the prisoner, it is a good bar to another indictment for the same crime: *Mounts v. State*, 14 O. 295.

A judgment on the verdict of conviction or acquittal is not necessary in order that either may constitute a bar to another indictment for the same offense: *Mounts v. State*, 14 O. 295.

"Thus careful has been the constitution to secure the pure and impartial administration of criminal justice, and to guard the accused from the possibility of oppression and wrong, under the forms of a criminal prosecution. It is his right to have a public trial; that he shall meet the witnesses face to face before the public, and that all that can be said or preferred against him, and all that can be said or urged in his favor, shall be in the hearing and presence of the public. The witnesses shall give their testimony in public, and the court shall declare the law in public, and the jury are sworn to render their verdict according to the law and the evidence thus publicly given.

In no other way can the jury be advised of a fact or principle of law touching the case of the accused. It is his right thus to have everybody know for what he is tried and why he is condemned, and to witness the manner, tone and temper of his prosecution; that he may be subjected to no other influence than truth and law, and that mercy which construes every doubt to his benefit. The court charged with his trial have no right to hold any communication with the jury touching his case, except in the presence of the prisoner, and before the public. The court can not secretly communicate to the jury what they have said respecting the law of the case. It is the right of the accused to know and have the public know that the court communicate no new principle of law which had not been before publicly declared, nor is he at all bound to trust to the court or judge in this matter. It is his great privilege, and no power can impair it. What a complete prostration, then, is it of the constitutional rights of the accused that a single judge, during the temporary adjournment of the court, should go to the jury room to explain to them what had been the charge of the court! It is not claimed that this judge acted from any other motive than a mistaken notion of duty. But this fact in no sense impairs the rights of the accused": *Kirk v. State*, 14 O. 511.

It is not error to omit giving notice to the prisoner's counsel, that he may be present when the verdict is to be delivered by the jury: *Sutcliffe v. State*, 18 O. 469.

If the accused has been found guilty and judgment has been rendered against him, and subsequently such judgment has been reversed in error proceedings brought by the accused, this constitutional provision does not prevent the accused from being put on trial a second time before a jury: *Sutcliffe v. State*, 18 O. 469.

Upon a plea of *auterfois acquit*, the true test to determine whether the accused has been put in jeopardy for the same offense is, whether the facts alleged in the second indictment, if proven to be true, would have warranted a conviction on the first indictment: *Price v. State*, 19 O. 423.

The accused can not enjoy the privileges granted to him in § 11, Art. VIII, of the constitution of 1802, unless present in court during his trial, so he may be said to have a constitutional right to be present: *Rose v. State*, 20 O. 31.

The word "district" in this section could not mean "judicial district," as the term is employed in Art. I, § 10, of the constitution of 1851, since such judicial districts were unknown under the constitutional district of 1802: *State, ex rel., v. McCarty*, 52 O. S. 363.

In a capital case, where the jury state they can not agree, the court may, in their discretion, discharge them, remand the prisoner for another trial and continue the case: *Hurley v. State*, 6 O. 399.

Plea to *auterfois acquit* must set forth not only the verdict of the jury, in the former trial, but a judgment thereon, or it is bad: *Hurley v. State*, 6 O. 399.

SECTION 12. That all persons shall be bailable by sufficient sureties, unless for capital offenses, where the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it. (*See Const. 1851, Art. I, §§ 8, 9.*)

Bailable offenses;
of the writ of
habeas corpus.

See Const. 1851, Art. I, §§ 8 and 9.

The constitution confers sufficient power to authorize the legislature, by statute, to permit bail as well after as before conviction: *State v. Clark*, 15 O. 596.

If the evidence exhibited on the hearing of the application be of so weak a character that it would not sustain a verdict of guilty against a motion for a new trial, the court will admit to bail: *State v. Summons*, 19 O. 139.

The court will not, as a matter of course, admit to bail because the jury in a trial for murder has not agreed upon a verdict. If the evidence exhibited on the hearing of the application be of so weak a character that it would not sustain a verdict of guilty against a motion for a new trial, the court will admit to bail: *State v. Summons*, 19 O. 139.

"The inquiry naturally speaks upon 'Who is to decide whether the proof be evident or the presumption great?' Most undoubtedly the same authority which prescribes the amount of bail and passes upon the sufficiency of the sureties, the judges of the court who exercise this same power in all analogous cases known to our laws": *State v. Summons*, 19 O. 139.

Art.VIII, § 13. CONSTITUTION OF THE STATE OF OHIO OF 1802.

Of bail, fine, and punishment.

SECTION **13**. Excessive bail shall not be required; excessive fines shall not be imposed; nor cruel and unusual punishments inflicted. (*See Const. 1851, Art. I, § 9.*)

See Const. 1851, Art. I, § 9.

Punishment to be proportioned to offense.

SECTION **14**. All penalties shall be proportioned to the nature of the offence. No wise legislature will affix the same punishment to the crimes of theft, forgery and the like, which they do to those of murder and treason. When the same undistinguished severity is exerted against all offences, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant, with as little compunction as they do the slightest offenses. For the same reasons, a multitude of sanguinary laws are both impolitic and unjust: the true design of all punishments being to reform, not to exterminate mankind.

Of insolvent debtors.

SECTION **15**. The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law. (*See Const. 1851, Art. I, § 15.*)

See Const. 1851, Art. I, § 15.

Laws; ex post facto; relative to contracts; forfeiture of estate, etc.

SECTION **16**. No ex post facto law, nor any law impairing the validity of contracts, shall ever be made; and no conviction shall work corruption of blood, or forfeiture of estate. (*See Const. 1851, Art. II, § 28.*)

See Const. 1851, Art. II, § 28.

I. Retroactive laws.

- A. Curative.
- B. Declaratory.
- C. Law divesting vested rights.

II. Laws impairing obligation of contracts.

- A. What constitutes contract.

B. Specific illustrations.

- 1. Taxation.
- 2. Remedies.
- 3. Insolvency laws.
- C. Effect.

III. Corruption of blood.
IV. Forfeiture of estate.

I. RETROACTIVE LAWS.

A. Curative. This section did not prevent retroactive laws which violated no principle of natural justice, but on the contrary, were in furtherance of equity and good morals: *Trustees v. McCaughy*, 2 O. S. 152 [citing and following *Johnson v. Bentley*, 16 O. 97; *Lewis v. McElvain*, 16 O. 347; *Bartholemew v. Bentley*, 1 O. S. 37; *Kearny v. Buttles*, 1 O. S. 362]; see, also, *Hays v. Armstrong*, 7 O. (pt. 1) 248.

Section 2 of the act passed January 29, 1833, amendatory of the act providing for the acknowledgment of deeds, etc., is constitutional and of binding force, notwithstanding its retrospective operation: *Barton v. Morris*, 15 O. 408.

An act of confirmation which merely cures an informality in a certificate of a magistrate, which creates no new title and which affects no right, but which equitably passes from the grantor, and which accomplishes merely that which upon principles of natural justice a court of equity ought to decree, may have a retrospective operation if the legislature intended it to give that effect. Accordingly, a statute which cured the failure of the notary to certify that he read or otherwise made known to a married woman the contents of a deed executed by her was held to be valid: *Chestnut v. Shane*, 16 O. 599 [overruling *Connell v. Connell*, 6 O. 353; *Good v. Zercher*, 12 O. 364; *Meddock v. Williams*, 12 O. 377; *Silliman v. Cummings*, 13 O. 116].

B. Declaratory. A so-called declaratory statute which in fact changes the law, but purports merely to explain the meaning of a previous statute, is unconstitutional as to cases which arose after the original statute was passed and before the so-called declaratory statute was passed: *Aurora Borealis v. Dobbie*, 17 O. 125.

A statute which provided for contribution between cosureties and the like in cases where by mistake property had been seized on execution, which was not liable to such execution, was held to be declaratory merely, and to apply to pre-existing cases of action: *Acheson v. Miller*, 2 O. S. 203.

C. Law divesting vested rights. A law which relates back so as to divest a person of rights which have already vested in him, is already constitutional: *Steamboat Monarch v. Finley*, 10 O. 384.

A special statute, however, which authorizes the sale of an entailed estate was held to be valid in *Carroll v. Olmstead*, 16 O. 251.

An assignment to a commissioner of insolvents in Ohio was held not to have any retroactive effect in *Ennis v. Hulse*, W. 259.

II. LAWS IMPAIRING OBLIGATION OF CONTRACTS.

A. What constitutes contract. The creation of a public corporation for the purpose of government is not a contract: *Marietta v. Fearing*, 4 O. 427.

The legislature has power to create or to abolish municipalities or public quasi corporations, or to enlarge or to restrict their powers: *Marietta v. Fearing*, 4 O. 427.

A license to practice a profession is not a contract, does not confer any vested privilege and may be modified in such manner as the public welfare may require: *State v. Gazley*, 5 O. 15.

The agreement between the United States and the state of Ohio by which the United States took the Cumberland road, was held to be a contract which prevented the state from subsequently charging toll upon passengers carried in mail coaches: *Neil v. State*, 44 U. S. (3 How.) 720, 12 O. F. D. 739 [overruling *State v. Neil*, 7 O. (pt. 1) 132].

B. Specific illustrations.

1. Taxation. In 1845 the legislature passed a general banking law, the fifty-ninth section of which required the officers to make semiannual dividends, and the sixtieth required them to set off six per cent. of such dividends for the use of the state, which sum or amount so set off should be in lieu of all taxes to which the company, or the stockholders therein would otherwise be subject. On March 21, 1851, an act was passed, entitled "An act to tax banks, and bank and other stocks, the same as property is now taxable by the laws of this state." The operation of this law being to increase the tax, the question arose whether the latter act, as far as it applied to banks organized under the act of 1845, was an act impairing the obligation of a contract, and in contravention of the tenth section of the first article of the constitution of the United States. In a series of decisions it was held by the supreme court of Ohio, that such charters were not contracts: *Mechanics and Traders Bank v. Debolt*, 1 O. S. 591; *Toledo Bank v. Bond*, 1 O. S. 622; *Knoup v. Bank*, 1 O. S. 603; *Sandusky City Bank v. Wilbor*, 7 O. S. 481; *Skelly v. Jefferson Branch Bank*, 9 O. S. 606. But the supreme court of the United States reversed those decisions in the cases of *Piqua Branch Bank v. Knoop*, 16 How. 369; *Dodge v. Woolsey*, 18 How. 331; *Mechanics and Traders Bank v. Debolt*, 18 How. 380; *Jefferson Branch Bank v. Skelly*, 1 Black, 436, holding that the charters of the banks were contracts fixing the amount of taxation, and not a law prescribing a rule of taxation until changed by the legislature, and that therefore the act of 1851 was unconstitutional.

A statute which exempted certain land of the Ohio university from taxation was not a contract; and the subsequent statute providing for the taxation of such land after it was sold did not impair the obligation of any contract: *Armstrong v. Athens Co.*, 10 O. 235.

The 26th section of the act amendatory of the tax law, which taxes rents reserved in leases for a term of fourteen years or upwards, renewable and chargeable upon real property, which rents are to be assessed to the person entitled to receive the same, as personal property, at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents, is constitutional: *Loring v. State*, 16 O. 590.

Where the state, by an act incorporating the Ohio university, vested in that institution two townships of land for the support of the university and instruction of youth, and in the same act authorized the university to lease said lands for ninety-nine years, renewable forever, and provided that lands thus to be leased should forever thereafter be exempt from all state taxes. It was held that the acceptance of such leases at a fixed rent or rate of purchase by the lessees constitutes a binding contract between the state and the lessees. A subsequent act of the legislature, levying a state tax on such lands, is a "law impairing the obligation of contracts," within the purview of the tenth section of the first article of the constitution of the United States, and is therefore, pro tanto, null and void: *Matheny v. Golden*, 5 O. S. 361.

Art.VIII, § 16. CONSTITUTION OF THE STATE OF OHIO OF 1802.

2. Remedies. The act of 1838 to abolish imprisonment for debt operates to discharge a debtor confined on the prison limits before the act took effect. The act affects the remedy, not the contract: *Parker v. Sterling*, 10 O. 357; see, also, *Towsey v. Avery*, 11 O. 90.

A statute which provided that a judgment should cease to be a lien upon realty unless execution was issued in a year was valid and constitutional as applied to judgments recovered before the passage of such statute, as well as to judgments recovered thereafter: *McCormick v. Alexander*, 2 O. 65; see, also, *Waymire v. Staley*, 3 O. 366.

Such statute did not affect levies which had already been made and were in force: *Corwin v. Benham*, 2 O. S. 36.

A statute which cured defects in appeal bonds applied to cases pending when the statute was in action: *Hays v. Armstrong*, 7 O. (pt. 1) 247.

A statute which provided that a judgment in favor of a bank might be discharged by payment of notes of such bank was valid: *Bank v. Domigan*, 12 O. 220.

A statute which gave contribution between cosureties or persons who were joint parties to a judgment where a property had been levied on in satisfaction of a judgment without right to levy thereon was held to be valid: *Acheson v. Miller*, 2 O. S. 203.

The act of March 5, 1842 (2 Curwen, 880), regulating the mode of collecting debts against turnpike companies, in which the state is a party, was held not to be a law impairing the obligations of a contract, and was therefore held to be constitutional: *State v. Turnpike Co.*, 14 O. 405.

3. Insolvency laws. A discharge of a debt between two citizens of the same state, under the insolvent laws of the state, when the debt was contracted after the laws were enacted, is a good defense to an action on the judgment brought in Ohio: *Bank v. Card*, 7 O. (pt. 2) 170.

Insolvent laws constitute a part of the law of the contract, and where a discharge has been obtained in the state when the contract was to be performed, it is a complete bar to any subsequent suit: *Bank v. Card*, 7 O. (pt. 2) 170; see, to same effect, *Smith v. Parsons*, 1 O. 236.

Article VIII, § 16, of the bill of rights of the state of Ohio, prohibits making any law impairing the obligation of contracts: *Shaver v. The Pennsylvania Co.*, 71 Fed. 931, 9 O. F. D. 221; see, to same effect, *Johnson v. Bentley*, 16 O. 97.

The statute of 1824, providing "that no judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied before the expiration of one year after the rendition of such judgment, shall operate as a lien on the estate of any debtor, to the prejudice of any other bona fide judgment creditor," did not affect levies theretofore made and then in full force: *Corwin v. Benham*, 2 O. S. 36.

If an amendment was construed to mean that the stockholder was liable only for such debts as have matured and upon which suits could be at once brought before the stock was transferred, it would be void as obnoxious to Art. VIII, § 16, of the constitution of 1802: *Scofield v. Oil Co.*, 6 O. C. C. (N.S.) 169, 17 O. C. D. 347 [affirmed, without report, *Cobb v. Scofield*, 74 O. S. 513].

C. Effect. Retroactive laws or laws other than curative laws or laws modifying remedies, are invalid: *Smith v. Parsons*, 1 O. 236.

III. CORRUPTION OF BLOOD.

In England, the conviction of many offenses works "corruption of blood and forfeiture of estate." The forfeiture is to the king. The blood is corrupted. The attainted person can neither inherit from his ancestors nor can he transmit inheritance. His property is not given to his heirs, but, by the forfeiture, is taken from them. The effects of the crime of the father are thus visited upon his children. It was against such a state of things that the convention intended to provide. A man sentenced to imprisonment for life in the penitentiary, in punishment for crime, is not civilly dead, and letters of administration can not be granted on his estate: *Frazer v. Fulcher*, 17 O. 260.

IV. FORFEITURE OF ESTATE.

This provision does not render invalid a statute which provides for the forfeiture of estates for nonpayment of taxes. It applies only to forfeiture which is incident to a conviction of a crime: *McMillan v. Robbins*, 5 O. 28.

CONSTITUTION OF THE STATE OF OHIO OF 1802. Art.VIII, § 17.

SECTION **17.** That no person shall be liable to be transported out of this state, for any offence committed within the state. (*See Const. 1851, Art. I, § 12.*)

Transportation
for crimes.

See Const. 1851, Art. I, § 12.

SECTION **18.** That a frequent recurrence to the fundamental principles of civil government, is absolutely necessary to preserve the blessings of liberty.

Of recurrence to
the organic
law.

SECTION **19.** That the people have a right to assemble together, in a peaceable manner, to consult for their common good, to instruct their representatives, and to apply to the legislature for a redress of grievances. (*See Const. 1851, Art. I, § 3.*)

Of the right to
assemble.

See Const. 1851, Art. I, § 3.

Cited: *Bank v. Knoop*, 57 U. S. (16 How.) 369, 3 O. F. D. 133.

SECTION **20.** That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in time of peace, are dangerous to liberty, they shall not be kept up; and that the military shall be kept under strict subordination to the civil power. (*See Const. 1851, Art. I, § 4.*)

Of bearing arms;
standing armies;
subordination of
military power.

See Const. 1851, Art. I, § 4.

It is contempt of court to muster and examine a militia company, with martial music, so near the court as to disturb its proceedings: *State v. Goff*, W. 78.

Where a body of militia performs their evolutions with martial music and firing so near the courthouse as to interrupt or suspend the business of the court, the officers are liable for contempt, if they refuse to desist on request: *State v. Coulter*, W. 421.

The military is a branch of the executive, and not a distinct department of government: *State v. Coulter*, W. 421.

SECTION **21.** That no person in this state, except such as are employed in the army or navy of the United States, or militia in actual service, shall be subject to corporal punishment under the military law.

Corporal punish-
ment under mil-
itary law.

SECTION **22.** That no soldier, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in the manner prescribed by law. (*See Const. 1851, Art. I, § 13.*)

Of quartering
troops

See Const. 1851, Art. I, § 13.

SECTION **23.** That the levying taxes by the poll is grievous and oppressive; therefore, the legislature shall never levy a poll tax for county or state purposes. (*See Const. 1851, Art. XII, § 1.*)

Of poll tax.

See Const. 1851, Art. XII, § 1.

A tax assessed upon the members of a profession, upon account of their practice, is constitutional, being not a poll but a faculty tax, and may be legally assessed by the judicial tribunals: *State v. Gazlay*, 5 O. 14; *State v. Hibbard*, 3 O. 63.

A city ordinance which imposes a reasonable charge upon draymen by way of excise upon their special employment was held to be valid: *Cincinnati v. Bryson*, 15 O. 625.

A city ordinance imposing a charge of twenty-five cents upon persons who occupied stalls in a market place was held to be valid and enforceable: *Cincinnati v. Buckingham*, 10 O. 257.

Art.VIII, § 24. CONSTITUTION OF THE STATE OF OHIO OF 1802.

Hereditary privileges, etc.

SECTION 24. That no hereditary emoluments, privileges or honors, shall ever be granted or conferred by this state. (*See Const. 1851, Art. I, § 17.*)

See Const. 1851, Art. 1, § 17.

The bill of rights in the constitution of Ohio, under which the law in controversy was enacted, contained the following restriction: "that no hereditary emoluments, privileges or honors shall ever be granted or conferred by this state." It would be difficult to conceive how offices, franchises and immunities could be conferred as incorporeal hereditaments, or privileges or estates capable of being hereditary, without a conflict with the constitution: *Bank v. Bond*, 1 O. S. 622; see, also, *Insurance Co. v. Debolt*, 57 U. S. (16 How.) 416, 3 O. F. D. 170.

Of schools and poor children.

SECTION 25. That no law shall be passed to prevent the poor in the several counties and townships within this state from an equal participation in the schools, academies, colleges and universities within this state, which are endowed, in whole or in part, from the revenue arising from donations made by the United States, for the support of schools and colleges; and the doors of the said schools, academies and universities, shall be open for the reception of scholars, students and teachers, of every grade, without any distinction or preference whatever, contrary to the intent for which said donations were made.

Cited and referred to: *Shryock v. Railroad*, 6 O. L. R. 19, 53 Bull. 86 (railroad commission); *State v. McCann*, 21 O. S. 198.

A statute which provided for establishing separate schools for the education of colored children (*Curwen*, 1469; act of February 20, 1849), was held to be constitutional; and it was said to be a matter which was properly left to the general assembly as a part of its legislative functions; and as a matter of policy it was best to place the white youth and colored youth into separate schools and divide the school fund in proportion to their numbers: *State v. Cincinnati*, 19 O. 178.

Disposition of proceeds of section 29.

SECTION 26. That laws shall be passed by the legislature, which shall secure to each and every denomination of religious societies, in each surveyed township which now is, or may hereafter be formed in the state, an equal participation, according to their number of adherents, of the profits arising from the land granted by congress, for the support of religion, agreeably to the ordinance or act of congress, making the appropriation.

Under this section it was necessary that the sect which claims its proportion of the profits of such land should have formed itself into a society and given itself a name. It was not sufficient that they were individual members of such sect within the township, but it was not necessary that the individual members of such religious society should be citizens: *State v. Delphi Township*, 11 O. 24.

Incorporation of literary societies.

SECTION 27. That every association of persons, when regularly formed, within this state, and having given themselves a name, may, on application to the legislature, be entitled to receive letters of incorporation, to enable them to hold estates, real and personal, for the support of their schools, academies, colleges, universities, and for other purposes.

The constitution, by this provision, expressly authorized the granting acts of incorporation, and prescribed the mode of doing it: *Bank v. Bond*, 1 O. S. 622.

"I am not disposed to controvert that under this section of the constitution some of the franchises may be delegated to a private corporation or to an individual, but such delegations were never designed to confer, nor do they confer, any right of property in the corporation or individual; they are made from public consideration alone, and the corporation or individual becomes only a trustee for the public benefit": *Knoup v. Bank*, 1 O. S. 603.

SECTION 28. To guard against the transgression of the high powers, which we have delegated, we declare, that all powers, not hereby delegated, remain with the people. (*See Const. 1851, Art. I, § 20.*)

Powers reserved to the people.

See Const. 1852, Art. I, § 20.

This section contains an important provision which it is the right of every citizen to invoke, and the duty of judicial tribunals to guard with scrupulous fidelity. It guards against the exercise of powers not delegated to any department of the government. The powers delegated to separate departments are legislative, executive and judicial, without any attempt at specific enumeration. Each department can exercise such power, and such only as falls within the scope of the express delegation: *Scovill v. Cleveland*, 1 O. S. 126.

The people have by this section granted certain powers, to be exercised for their benefit, until they see fit to resume them and have retained others. The general assembly, like the other departments of government, exercise only delegated authority, and it can not be doubted that an act passed by it, not falling fairly within the scope of legislative power, is as clearly void as though expressly prohibited: *Railroad v. Commissioners*, 1 O. S. 77.

The government created by the constitution of Ohio of 1892, although not enumerated, is one of limited powers. It is true, the grant to the general assembly of "legislative authority" is general; but its exercise within that limit is necessarily restrained by the previous grant of certain powers to the federal government, and by the express limitations to be found in other parts of the constitution. Outside of that boundary it needed no express limitation, for nothing was granted. When, therefore, the exercise of any power by that body is questioned, its validity must be determined by the nature of the power, connected with the manner and purpose of its exercise: *Bank v. Knoop*, 57 U. S. (16 How.) 369, 3 O. F. D. 133.

SCHEDULE.

SECTION 1. That no evils or inconveniences may arise, from the change of a territorial government to a permanent state government, it is declared by this convention, that all rights, suits, actions, prosecutions, claims and contracts, both as it respects individuals and bodies corporate, shall continue, as if no change had taken place in this government. (*See Const. 1851, Sched. § 1.*)

Of former suits and claims.

See Const. 1851, Schedule, § 1.

SECTION 2. All fines, penalties and forfeitures, due and owing to the territory of the United States, north-west of the river Ohio, shall inure to the use of the state. All bonds executed to the governor, or any other officer in his official capacity, in the territory, shall pass over to the governor or the other officers of the state, and their successors in office, for the use of the state, or by him or them to be respectively assigned over to the use of those concerned, as the case may be.

Of former fines and official bonds.

SECTION 3. The governor, secretary and judges, and all other officers under the territorial government, shall continue in the exercise of the duties of their respective departments, until the said officers are superseded under the authority of this constitution. (*See Const. 1851, Sched. § 10.*)

Of former officers.

See Const. 1851, Schedule, § 10.

SECTION 4. All laws, and parts of laws, now in force in this territory, not inconsistent with this constitution, shall continue and remain in full effect, until repealed by the legislature, except so much of the act, entitled "an act regulating the admission and practice of attorneys and counselors at law," and

Of prior laws.

§ 5. CONSTITUTION OF THE STATE OF OHIO OF 1802.

of the act made amendatory thereto, as relates to the term of time which the applicant shall have studied law, his residence within the territory, and the term of time which he shall have practiced as an attorney at law, before he can be admitted to the degree of a counselor at law. (*See Const. 1851, Sched. § 1.*)

See Const. 1851, Schedule, § 1.

Temporary state seal.

SECTION 5. The governor of the state shall make use of his private seal, until a state seal be procured.

The first election.

SECTION 6. The president of the convention shall issue writs of election to the sheriffs of the several counties, requiring them to proceed to the election of a governor, members of the general assembly, sheriffs and coroners, at the respective election districts in each county, on the second Tuesday of January next; which election shall be conducted in the manner prescribed by the existing election laws of this territory: and the members of the general assembly, then elected, shall continue to exercise the duties of their respective offices until the next annual or biennial election thereafter, as prescribed in this constitution, and no longer.

The first apportionment of representation.

SECTION 7. Until the first enumeration shall be made, as directed in the second section of the first article of this constitution, the county of Hamilton shall be entitled to four senators and eight representatives; the county of Clermont, one senator and two representatives; the county of Adams, one senator and three representatives; the county of Ross, two senators and four representatives; the county of Fairfield, one senator and two representatives; the county of Washington, two senators and three representatives; the county of Belmont, one senator and two representatives; the county of Jefferson, two senators and four representatives; and the county of Trumbull, one senator and two representatives.

Done in convention, at Chillicothe, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and two, and of the independence of the United States of America, the twenty-seventh.

In testimony whereof, we have hereunto subscribed our names.

EDWARD TIFFIN, *President*,
and representative from the county of Ross.

JOSEPH DARLINGTON,	}	Adams county.
ISRAEL DONALSON,		
THOMAS KIRKER,		
JAMES CALDWELL,	}	Belmont county.
ELIJAH WOODS,		
PHILIP GATCH,	}	Clermont county.
JAMES SARGENT,		
HENRY ABRAMS,	}	Fairfield county.
EMANUEL CARPENTER,		

JOHN W. BROWNE, CHARLES WILLING BYRD, FRANCIS DUNLAVY, WILLIAM GOFORTH, JOHN KITCHEL, JEREMIAH MORROW, JOHN PAUL, JOHN REILY, JOHN SMITH, JOHN WILSON,	}	Hamilton county.
RUDOLPH BAIR, GEORGE HUMPHREY, JOHN MILLIGAN, NATHAN UPDEGRAFF, BAZALEEL WELLS,	}	Jefferson county.
MICHAEL BALDWIN, JAMES GRUBB, NATHANIEL MASSIE, THOMAS WORTHINGTON,	}	Ross county.
DAVID ABBOTT, SAMUEL HUNTINGTON,	}	Trumbull county.
EPHRAIM CUTLER, BENJAMIN IVES GILMAN, JOHN MCINTYRE, RUFUS PUTNAM,	}	Washington county.

Attest:

THOMAS SCOTT, *Secretary*.

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Constitution of the State of Ohio of 1851

With Amendments Adopted on September 3, 1912

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WE, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

I. Boundaries of Ohio.

II. Freedom.

I. BOUNDARIES OF OHIO.

For original boundary lines of Ohio, see act of Congress, approved, April 30, 1802, 1 Chase, 70.

When the constitution of 1802 was formed the latitude of the southerly extremity of Lake Michigan was not known accurately, and was supposed to be much farther north than in fact it was.

The boundaries of Ohio, as prescribed in the enabling act passed by congress on April 30, 1802 (Swan's Land Laws, 221) in § 2 of such act, was "on the east by the Pennsylvania line, on the south by the Ohio river to the mouth of the Great Miami, on the west by a line drawn due north from the mouth of the Great Miami aforesaid, and on the north by an east and west line drawn through the southerly extreme of Lake Michigan, running east after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect Lake Erie or the territorial line, and thence with the same through Lake Erie to the Pennsylvania line aforesaid".

The provision in this section of the Ohio constitution was probably inserted because it was realized that the latitude of the southern extreme of Lake Michigan was uncertain. See discussion in *Daniels v. Stevens*, 19 O. 222.

As this territory became settled a sharp dispute between Ohio and Michigan arose, which was finally settled by an act of congress passed June 15, 1836, which fixed the northern boundary of Ohio at a line drawn directly from the southern extreme of Lake Michigan to the most northerly cape in Maumee Bay; thence intersecting the territorial line, and thence with the same to the Pennsylvania line. This statute required Michigan to assent thereto as a condition precedent to its admission to the Union. Michigan assented to such provision December 15, 1836, and Michigan was admitted to the Union January 26, 1837. See discussion in *Myers v. Bank*, 20 O. 283.

Service of summons upon one who resided in the strip of territory in dispute at a time when it was in fact a part of Michigan, did not give jurisdiction to a court of Ohio: *Daniels v. Stevens*, 19 O. 222.

A banking corporation which was engaged in business in the territory in dispute between Ohio and Michigan, and which was incorporated by the territory of Michigan, could not be regarded as an Ohio corporation after such territory was awarded to Ohio: *Myers v. Bank*, 20 O. 283.

The state is bounded by the Ohio river at the edge of the water. See obiter in *McCulloch v. Aten*, 2 O. 307.

The Ohio is a navigable river; it is moreover the boundary of state jurisdiction and sovereignty, and could only be a proper boundary for such purpose, while each state was limited to its own side of the water, because the jurisdiction of each, in its very nature, is exclusive of all others. Virginia being the original proprietor of both banks of the Ohio, granted to the United States all lands lying northwest of that river. This was held to convey only to low water mark. If Virginia had not been the original proprietor of both banks of the river, and it was a common boundary, the line would be the center, and the islands go with the adjoining mainland on that side of the channel where they lie: *Benner v. Platter*, 6 O. 504.

Land on the Ohio river between high and low water mark, is not common to the public, but may be conveyed by the adjacent proprietor whose land bounds on the river: *Blanchard v. Porter*, 11 O. 138.

The territorial limits of the state of Ohio extend on the southeast, at least to the line of ordinary low water mark, on the northwest side of the Ohio river: *Booth v. Hubbard*, 8 O. S. 243.

It does not become necessary, in this case, to determine whether the middle of the Ohio river, "the *filum medium aquae*," does or does not constitute the boundary line between the states of Virginia and Ohio. For all the purposes of this case, it may be assumed that Virginia was the original undisputed owner of the territory on both sides of the river, and still retains all that she did not part with by her deed of cession in 1784. By that deed she ceded to the United States, "all right, title, and claim, as well of soil as jurisdiction, which the said commonwealth hath to the territory within the limits of the Virginia charter, situate, lying, and being to the northwest of the river Ohio. (1 U. S. L. 474.) The object and one of the conditions of the cession, was that the ceded territory should be laid out and formed into states. In the case of *Handley's Lessee v. Anthony*, the supreme court of the United States, proceeding on the assumption that Virginia was the proprietor of both sides of the river, was called upon to give a construction to this deed of cession, and determine the boundary line which it establishes for the states bordering on the river. Chief Justice Marshall, in that case, states the general principle thus: "When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one state is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly created state extends to the river only. The river, however, is its boundary." (5 Wheat. Rep. 374.) The court further say in this case: "Wherever the river is a boundary between states, it is the main, the permanent river, which constitutes that boundary, and the mind will find itself embarrassed with insurmountable difficulty in attempting to draw any

other line than the low water mark." And looking to the intention of Virginia in this cession to the fact that she contemplated the future existence of independent states on the northwest side of the river, which, in the language of her compact with Kentucky in 1789, should "possess the opposite shores of the river," and that she must have had in view and intended the reasonable convenience of the future population of the new states, and looking to the natural character of the boundary furnished by the river itself, it was held in that case, that the boundary line, contemplated in the deed of cession, is that of low water mark on the northwest side of the river.

This decision has been acquiesced in by the courts of Virginia. In the case of *Commonwealth v. Garner* (3 Gratt. Rep. 655), a majority of the general court of that state, upon a very full examination of the subject, recognized the authority and propriety of the decision in *Handby's Lessee v. Anthony*; *Booth v. Hubbard*, 8 O. S. 243.

Ohio has always claimed to own to the center of the Ohio river: *Bridge Co. v. Mayer*, 31 O. S. 317.

"Whether the state did not confer and the company accept its franchise upon the condition that it would not assert any right, power, or liberty under its charter incompatible with these limitations; and whether it is not estopped, by the clear implication of the sixth clause, from denying the jurisdiction and sovereignty of Ohio to the centre of its bridge, are grave inquiries, upon which the court is not now required to pass": *Sebastian v. Bridge Co.*, 21 O. S. 451.

The boundary line between the United States and Canada through Lake Erie is the northern boundary of this state, and its jurisdiction extends to that line: *Edson v. Crangle*, 62 O. S. 49.

A boat in the Ohio river made fast to the Ohio shore is not within the jurisdiction of the state of Kentucky, nor amenable to process of that state: *Eckert v. Colvin*, 1 Dec. Rep. 11, 1 W. L. J. 54.

For offenses committed on the river between Ohio and Virginia, each state has concurrent jurisdiction: *Ohio v. Stevens*, 1 Dec. Rep. 82, 2 W. L. J. 66 [reversed, on another point, *Stephens v. State*, 14 O. 356].

For a discussion of the right of Ohio to concurrent jurisdiction with Virginia and Kentucky over the whole of Ohio river, see 3 W. L. J. 310 [report of Senate committee]; 3 W. L. J. 337 [speech of Mr. Anderson]; 4 W. L. J. 145 [Mr. Vinton's argument], and 5 W. L. J. 433 [report of Ohio commissioners].

See Const. 1802, Art. VII. § 6.

II. FREEDOM.

It must be presumed that the laws to be passed by the general assembly under the powers conferred by the constitution, are to be such as shall secure the blessings of freedom and promote our common welfare: *Palmer v. Tingle*, 55 O. S. 423.

A former legislative act (R. S. § 6968-2), imposing an unequal license on gill nets when used from different boats, was held to violate this provision for freedom and welfare: *Yensen v. State*, 7 O. N. P. 18, 9 O. D. (N.P.) 168.

2 Debates, 231, 326, 806, 826, 856.

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety. (*See Const. 1802, Art. VIII, § 1.*)

Right to freedom and protection of property.

- I. Cited.
- II. All men are by nature free.
- III. Life.
- IV. Liberty.
- V. Property.
 - A. Corporeal property.

- B. Contracts.
- C. Mechanic's lien.
- D. Licenses.
- E. Discrimination.
- VI. Happiness and safety.

I. CITED.

Lucas County v. State, ex rel., 75 O. S. 114; *Gage v. State*, 1 O. C. C. (N.S.) 221, 14 O. C. D. 724 [reversed, *State v. Gage*, 72 O. S. 210]; *State, ex rel., v. Commissioners*, 7 O. C. C. (N.S.) 469, 18 O. C. D. 212; *Ex parte Mullaney*, 8 O. N. P. 49, 10 O. D. (N.P.) 419; *In re Application of Bochtel*, 11 O. C. C. (N.S.) 537, 21 O. C. D. 159; *Hotel Co. v. Jones*, 2 O. L. R. 427, 193 U. S. 532, 14 O. F. D. 237; *Shaw v. Railway*, 8 O. L. R. 43.

Art.I, § 1. CONSTITUTION OF THE STATE OF OHIO OF 1851.

II. ALL MEN ARE BY NATURE FREE.

Scienter is necessary to the conviction of a man for harboring a slave, and one may presume all persons free and equal: *Birney v. State*, 8 O. 230.

"The absolute and equal freedom of all persons at birth is a fundamental principle of American institutions, proclaimed with independence, and incapable of abrogation. This principle was, by the ordinance of 1787, impressed on the soil of Ohio, before there was an organized community within her limits; it is fundamental in her organization; always embodied in her constitution; and her laws, her policy and the convictions, the morals and the religion of her people are instinct with its spirit": *Anderson v. Poindexter*, 6 O. S. 622.

This section does not give a man the right cruelly to beat a horse, and an act for the punishment of such conduct is valid: *Beamer v. State*, 21 O. C. C. 440, 12 O. C. D. 4.

This section does not forbid the enactment of a statute or the passage of an ordinance which forbids the employment of females in places where spirituous liquors are sold: *Bergman v. Cleveland*, 39 O. S. 651.

III. LIFE.

To justify killing to defend one's life, fear of great bodily harm must be shown: *Stewart v. State*, 1 O. S. 66.

"It is urged that the law of Ohio is, that a person assailed may in all cases, without retreating, take his assailant's life, if he reasonably believe it necessary to do so in order to save his own life, or to avoid great bodily harm; and this, although he could, without increasing his danger, retire, and thereby escape all necessity of slaying his adversary. As to what is the precise state of the law on this subject, there is some diversity of opinion among the members of this court, and, therefore, without attempting at this time to lay it down, we prefer to dispose of the case upon a view which is satisfactory to us all. . . . Whether a person assaulted is, or is not, bound to quit the combat, if he can safely do so, before taking life, it will not be denied that, in order to justify the homicide, he must, at least have reasonably have apprehended the loss of his own life or great bodily harm, to prevent which, and under a real, or at least supposed necessity, the fatal blow must be given. And, again, the combat must not have been of his own seeking, and he must not have put himself in the way of being assaulted, in order that, when assaulted and hard pressed, he might take the life of his assailant": *Stewart v. State*, 1 O. S. 66.

"When the nature of the question and the history of the rulings on the subject of defending person and property which have illustrated the advancement of the common law, from rude and barbarous, to refined and enlightened civilization, are clearly taken into view, we shall find the reasoning of Justice Redfield altogether safe and exactly in harmony with the system of government and society to which it is applied. 'It is well settled,' says the justice, 'that one may defend the possession of his property against a stranger with such force as may be necessary.' But this right can not be extended to the case of an officer whose duty it is to attach property whenever he is requested so to do. He may or may not require indemnity for the act. But it would be too much to say that he must decide all cases of doubtful property at his own hazard, or that if he attempted to make an attachment when the property was not in fact in the debtor, he might by the owner of the property be resisted to any extremity. . . . It must be familiar to all that, while the tendency of the best and highest American decisions, as well as the very genius of our government, are favorable to an increased regard for the sancity of the person by the same law, many measures of defense as to property have become obsolete and shocking to the enlightened humanity of the day. If the rule that one must retreat to the wall before killing his assailant has passed away, so has the day of mantraps and spring guns. . . . We hold, then, the better and safer and only practicable rule to be that, whenever the question of property is so far doubtful that the creditor and officer may be supposed to act, and do act in good faith and on reasonable grounds for believing the property to be that of the debtor, the owner has no right to resist the execution or attachment by a breach of the peace.

"The conversion of an execution into an alias writ can not affect the protection due to the constable to whom it was delivered. It was irregular, but not void": *Faris v. State*, 3 O. S. 159.

The guarantees found in this article are the only limitations upon the power of the general assembly to define and punish offenses: *Morgan v. Nolte*, 37 O. S. 23.

IV. LIBERTY.

An act forbidding the giving away in any place where liquors were sold of any food other than crackers (G. C. § 13224-1) was held in violation of this provision, as interfering with the seller's use of his property and with the buyer's right to eat what he pleases: *State v. Foucar*, 8 O. L. R. 317, 55 Bull. 365.

A constable, in serving a warrant for arrest out of the state, violates the right of liberty: *Smith v. Commissioners*, 9 O. 26.

One arrested may be held, although it develops that at the time of arrest he was a suitor in court and had not time to reach his home: *Gill v. Miner*, 13 O. S. 182.

"Liberty," as used in this section, means "the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare": *Crawford v. Tingle*, 55 O. S. 423.

It is competent to the general assembly in the exercise of its legislative power to adopt all such wholesome laws as may be necessary to promote the peace, health and well-being of society; laws fixing regularly recurring days of rest from all secular pursuits, such as our Sunday laws, are of this character, and do not violate the personal liberty of the individual, secured by the first section of our bill of rights: *State v. Powell*, 58 O. S. 325; see, also, *Bloom v. Richards*, 2 O. S. 387.

This section does not prevent the legislature from excluding from the saloon business persons unable to give proper answers as to the character of the saloon business conducted by them: *Bloomfield v. State*, 86 O. S. 253.

V. PROPERTY.

A. Corporeal property. The right of acquiring and protecting property is one of the inalienable rights of all men: *Auditor v. State*, ex rel., 75 O. S. 114.

An act providing for search warrant to seize all stamped bottles and restore them to the true owner was held in conflict with this section: *State v. Schmuck*, 77 O. S. 438.

These inalienable rights are possessed by living, not dead, men, and this section does not recognize any inherent testamentary power. Accordingly, provisions by which gifts and devises by will to charitable and public purposes, made within a year prior to the decease of the testator are void, and not in conflict with this section: *Patton v. Patton*, 39 O. S. 590.

A legislature may by statute prescribe the terms upon which one who has sold property on the installment plan may retake the same, and such statute does not violate this statute: *Weil v. State*, 46 O. S. 450.

The act of April 4, 1902, entitled "An act to prevent fraud in the purchase, disposition or sale of merchandise" (95 O. L. 96), is repugnant to the first article of the constitution because it places an unwarrantable restriction upon the right of the individual to acquire and possess property, and because it contains a forbidden discrimination in favor of a limited class of creditors: *Miller v. Crawford*, 70 O. S. 207.

The provisions of the constitution which require that laws regulating rights in property shall operate generally and equally, extend to statutes which prescribe the presumptions and rules of evidence by which those rights are enforced: *Williams v. Preslo*, 84 O. S. 328.

The act of April 30, 1908 (99 v. 241; G. C. § 11102, et seq.), to render presumptively fraudulent sales in bulk of stock of merchandise unless the seller shall, not less than seven days before the transfer, file with the recorder of the county a notice of his intention to make such sale, is repugnant to the first article of the constitution, and therefore void (*Miller v. Crawford*, 70 O. 207, approved and followed): *Williams v. Preslo*, 84 O. S. 328.

An act to deduct one per cent. of the salary paid to teachers to create a pension fund violates this provision, as a teacher's salary is his property, and if he prefers to spend his money as he earns it, it is his right under the constitution to do so: *State, ex rel., v. Hubbard*, 22 O. C. C. 252, 12 O. C. D. 87 [affirmed, without report, *Hibbard v. State*, 65 O. S. 574].

It is a violation of the employer's right to acquire property for third persons to induce or coerce his workmen to leave, and injunction will lie against a labor union: *Hillenbrand v. Trades Council*, 14 O. D. (N.P.) 628.

The destruction of a thing which is in itself a nuisance, as impure milk, is constitutional, but if only its use is harmful, as in case of an animal, it can not be destroyed: *Kaiser v. Walsh*, 4 O. N. P. (N.S.) 507, 17 O. D. (N.P.) 324.

Under this section a statute which requires railways to give discharged employes a statement in writing of the reason for their discharge is unconstitutional, since it interferes with the rights of the railroad to acquire and to protect property: *Connell v. Railway*, 14 O. D. (N.P.) 400.

A statute which gives a right of confiscating fish nets, but made no provision for a legal proceeding by which such confiscation might be adjudged, was rendered unconstitutional by this section: *Edson v. Crangle*, 62 O. S. 49.

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A statute which declares that a fish net used in violation of the law was a public nuisance and which provided for its destruction by certain public officers (compare G. C. § 1398), is a valid exercise of the police power of the state, and is not rendered invalid by this constitutional provision: *State v. French*, 71 O. S. 186.

B. Contracts. In view of the guarantees of the bill of rights, G. C. § 3673 can not be so interpreted as to authorize a municipal council to impose a license fee upon merchants who do not sell upon the public streets or places, but only solicit orders and negotiate future sales at the residences of their customers: *Tea Co. v. Tippecanoe*, 85 O. S. 120.

This section renders unconstitutional a statute which provides that contractors, in constructing public improvements, must employ their laborers for an eight-hour day: *Cleveland v. Construction Co.*, 67 O. S. 197.

An act limiting the hours of service of laborers on public works was held to be in conflict with this section as abridging the right to contract: *Stewart v. Gardner*, 10 O. C. C. (N.S.) 408, 20 O. C. D. 222.

An ordinance which makes provision for the construction of a public improvement and fixes a minimum rate of wages to be paid to common laborers thereon and fixes a maximum number of hours for a day's work, is unconstitutional: *State v. Norton*, 5 O. N. P. 183, 7 O. D. (N.P.) 354.

A statute which provided that ten hours should be a day's work, and that extra payment should be made in excess of ten, was held to be unconstitutional by reason of this provision: *Railroad v. Gilmore*, 8 O. C. C. 658, 4 O. C. D. 366.

Under this section a statute which makes it a crime to discharge an employe because of his connection with a labor organization is valid: *In re Berger*, 12 O. N. P. (N.S.) 401; *Davis v. State*, 30 Bull. 342.

Contra: that such statute is unconstitutional, see: *State v. Bateman*, 7 O. N. P. 487, 10 O. D. (N.P.) 68.

Apparently to the same effect: *State v. Brookman*, 72 O. S. 428.

The right to acquire property involves the right to contract, and applies to corporations as individuals; and a law is unconstitutional that enlarges the price of road contracts by allowing mechanics' liens when the head contractor has been paid in full: *Stewart v. Gardner*, 10 O. C. C. (N.S.) 408, 20 O. C. D. 218.

Freedom to contract includes contracts of employe to refrain from seeking damages of company where he has taken sick benefits, so that a law forbidding such contracts is unconstitutional: *Cox v. Railroad*, 1 O. N. P. 213, 2 O. D. (N.P.) 594 [question not considered in *Railway v. Cox*, 55 O. S. 497]; see, also, *Caldwell v. Railway*, 14 O. D. (N.P.) 375.

This section prohibits any restraint upon the liberty of contract as the most frequent means of acquiring property: *Jones v. Hotel Co.*, 86 Fed. 370, 30 C. C. A. 108, 10 O. F. D. 274; but see *Hotel Co. v. Jones*, 193 U. S. 532, 116 Fed. 793, 54 C. C. A. 162, 13 O. F. D. 727.

This guarantees to every person the right to make and enforce all proper contracts and to employ such persons as he chooses free from restraints except such as are necessary for the common welfare: *State v. Bateman*, 7 O. N. P. 487, 10 O. D. (N.P.) 68.

Employers have a right to employ whom they please upon such terms as they can agree upon, and the law will protect them against unlawful interference and boycotts: *Manufacturing Co. v. Polishers' Union*, 8 O. N. P. 574, 11 O. D. (N.P.) 643.

This section does not prevent the state from protecting minors and limiting their hours of labor under the police power: *State v. Rodefer*, 5 O. N. P. (N.S.) 337, 18 O. D. (N.P.) 76.

C. Mechanic's lien. A mechanic's lien law which gave a lien to the subcontractors and materialmen, irrespective of the state of accounts between the owner and the principal contractor was held to be unconstitutional by reason of this section: *Palmer v. Tingle*, 55 O. S. 423 [affirming *Palmer v. Tingle*, 9 O. C. C. 708, 6 O. C. D. 709]. Contra: *Hotel Co. v. Jones*, 193 U. S. 532, 116 Fed. 793, 54 C. C. A. 165, 13 O. F. D. 727; see Art. II, § 33 (adopted September 3, 1912).

A subcontractor's lien law which permits recovery from the owner only if he is indebted to the principal contractor and only to the extent of such indebtedness is constitutional: *Lane v. Thomas*, 15 O. C. D. 303.

D. Licenses. A statute which authorized municipal corporations to impose license fees upon transient traders was held to be invalid, as unequal in its operation: *Flatau v. Mansfield*, 14 O. C. C. 592, 7 O. C. D. 39.

This section does not render invalid an ordinance which imposes a license fee upon persons who use vehicles upon the streets of municipal corporations: *Sterling v. Bowling Green*, 5 O. C. C. (N.S.) 217, 16 O. C. D. 581.

An act licensing the same kind of net at different amounts when used on different sized boats is invalid as imposing unequal burdens on men engaged in the same occupation: *Yensen v. State*, 7 O. N. P. 18, 9 O. D. (N.P.) 168.

This section was held to be violated by a provision for the seizure and destruction of unlicensed fishing nets without any right of action for damages permitted to the owner: *French v. Shirley*, 7 O. N. P. 26, 9 O. D. (N.P.) 181; see, also, *Edson v. Crangle*, 62 O. S. 49.

An act providing a penalty for erecting a temporary place of business within one-fourth of a mile of an agricultural fair, without permission of the board of managers (G. C. § 13394) was held in conflict with this section as abridging right to acquire property: *Markley v. State*, 12 O. C. C. (N.S.) 81, 21 O. C. D. 225.

General Code § 13208 forbidding sale of articles within four miles of an assemblage for worship without a permit from the managers is unconstitutional, although it excepted established dealers: *State v. Coats*, 10 O. N. P. (N.S.) 349, 20 O. D. (N.P.) 561.

Under a municipal local option law, a provision permitting brewers in dry towns to sell outside the town does not violate this section: *Lloyd v. Dollison*, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, *State v. Dollison*, 68 O. S. 688].

General Code § 3673 must not be interpreted so as to authorize a municipal corporation to impose a license fee upon merchants who do not sell upon public streets but who only solicit orders at the residences of their customers, and negotiate future sales there; and if so interpreted, it would be invalid as a violation of the right of property: *Tea Co. v. Tippecanoe*, 85 O. S.

E. Discrimination. A statute which requires that a bond of administration be signed by surety companies rather than by personal surety is unconstitutional and in violation of this section: *State v. Robins*, 71 O. S. 273. Contra: *McKisson v. Wright*, 15 O. D. (N.P.) 105.

In 17 O. C. D. 593 it was said that this section did not invalidate a statute which provided for paying pensions to worthy blind persons. This case, however, was reversed in *Auditor v. Stall*, 75 O. S. 114, on the ground that such statute provided for raising money by taxation for purposes which were not public.

This section does not render invalid the county depository act as a discrimination against natural persons in favor of banks (see, G. C. §§ 2715 and 2745): *State v. Oviatt*, 8 O. C. C. (N.S.) 481 [affirming *State v. Oviatt*, 4 O. N. P. (N.S.) 481, 17 O. D. (N.P.) 451].

A provision of the statute providing for local option, to the effect that business blocks were to be exempt, does not deny equal protection of the laws to the property owners: *Columbus v. Jeffrey*, 2 O. N. P. (N.S.) 85, 14 O. D. (N.P.) 609 [affirmed, *Jeffrey v. State*, 4 O. C. C. (N.S.) 494].

This section does not render invalid a provision which exempts building and loan associations from the operation of the usury laws: *Building & Loan Association v. Desnoyers*, 4 O. C. C. (N.S.) 337, 16 O. C. D. 352; *Carmichael v. Savings Co.*, 15 O. D. (N.P.) 341; see, also, *Cramer v. Trust Co.*, 72 O. S. 395.

A provision that the defendant only shall have right to appeal from the decision of a justice of the peace, on motion to dissolve an attachment does not violate this section: *Hare v. Cook*, 6 O. C. C. (N.S.) 73, 17 O. C. D. 289 [following *Cecill v. Grant*, 6 O. C. C. (N.S.) 65, 17 O. C. D. 442].

The right to defend against an action to recover money is implied from the bill of rights, and a statute permitting an attorney's fee for plaintiff to be charged to defendant violates this right: *Coal Co. v. Rosser*, 53 O. S. 12.

VI. HAPPINESS AND SAFETY.

Prize fighters are public nuisances which affect a man's comfort and welfare and his pursuit of happiness: *State, ex rel., v. Hobart*, 8 O. N. P. 246, 11 O. D. (N.P.) 166.

The act of May 31, 1911, relating to preservation of the health of females employed in manufacturing, mechanical, mercantile and other establishments, is not in derogation of the constitutional right of freedom of contract, nor is the classification arbitrary or the exemption unreasonable which is therein established, but the act is justified on the ground of public health, morals and the general welfare, and is valid and enforceable: *Ex parte Hawley*, 12 O. N. P. (N.S.) 1 [affirmed upon authority of opinion of common pleas court in *Ex parte Hawley*, 85 O. S. 494].

SECTION 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges

Right to alter, reform, or abolish government, and repeal special privileges.

Art.I, § 2. CONSTITUTION OF THE STATE OF OHIO OF 1851.

or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly. (*Sec Const.* 1802, *Art. VIII*, § 1.)

See Const. 1802, Art. VIII, § 1.

I. Cited.

II. Political power inherent in people.

I. CITED.

Palmer v. Tingle, 55 O. S. 423; Auditor v. State, ex rel., 75 O. S. 114; Uhrlaub v. Cincinnati, 8 O. C. C. (N.S.) 505, 18 O. C. D. 797 [affirmed, without report, in Cincinnati v. Uhrlaub, 72 O. S. 667]; In re Bachtel 21 O. C. D. 159; Christy v. Groves, 3 O. N. P. 293, 2 O. D. (N.P.) 384; Hotel Co. v. Jones, 2 O. L. R. 427, 193 U. S. 532, 14 O. F. D. 337.

II. POLITICAL POWER INHERENT IN PEOPLE.

"The constitution apportions political power among the inhabitants of the state as nearly equally as possible, in proportion to numbers, without any regard whatever to property, or indeed to any other circumstance. Inhabitants alone are represented: a given number in one place exercise the same political power as a like number in any other locality": State v. Dudley, 1 O. S. 437.

This enunciates the foundation principal of our government, to-wit: that the people are the source of all political power; but it was not intended as a denial of the right of delegation and representation: State, ex rel., v. Covington, 29 O. S. 102.

III. EQUAL PROTECTION.

Judicial tribunals are provided for the equal protection of every suitor: Coal Co. v. Rosser, 53 O. S. 12.

The doctrine of equal protection does not include every slight inconvenience which may be distorted into a seeming inequality: State, ex rel., v. Bode, 55 O. S. 224.

This section does not render invalid a statute which forbids the placing of the name of a candidate more than once on a ballot: State, ex rel., v. Bode, 55 O. S. 224.

Laws providing for primary elections by parties casting ten per cent. of the vote at last general election do not deprive any person of the equal protection of the law: State, ex rel., v. Felton, 77 O. S. 554.

The statutes creating the Railroad commission, G. C. § 487, et seq., are valid and constitutional: Railway v. Railroad Commission, 21 O. D. (N.P.) 468.

This section limits, impliedly, the power of the general assembly to tax privileges and franchises: Southern Gum Co. v. Laylin, 66 O. S. 578.

A mechanic's lien law which allowed subcontractors and materialmen to file a direct lien upon a property, irrespective of the state of accounts between the owner and the chief contractor, was held to be invalid by reason of this section: Palmer v. Tingles, 9 O. C. C. 708, 6 O. C. D. 709 [affirmed, Palmer v. Tingle, 55 O. S. 423].

A direct inheritance tax law which exempted estates below a certain limit; and also taxed the estates at different rates, according to their respective amounts, was held to be invalid in State, ex rel., v. Ferris, 53 O. S. 314.

A direct inheritance tax law which exempted up to the amount of three thousand dollars, was held not to deprive any persons of the equal protection of the laws, if it operated uniformly throughout the state and bore equally upon all persons standing in the same category: State, ex rel., v. Guilbert, 70 O. S. 229.

A collateral inheritance tax statute which exempts property devised to or for the use of any institution in this state for purposes of purely public charity, does not exempt devises to foreign religious organizations; but this section does render such statute invalid on account of such discrimination: Humphreys v. State, 70 O. S. 67.

A collateral inheritance tax which exempted two hundred dollars worth of property, and imposed a higher rate upon the more remote relations than upon the nearer ones, was held to be valid: Haggerty v. State, ex rel., 55 O. S. 613.

A statute which authorizes municipal corporations to impose license fees on transient traders is unconstitutional by virtue of this section (G. C. §§ 3673 and 3676): Flatau v. Mansfield, 14 O. C. C. 592, 7 O. C. D. 39.

General Code §§ 6083, 13219 and 13221 which require answers to certain questions to be made by persons who are engaged in the business of selling intoxicating liquors when the tax assessor is collecting returns for taxation, are not rendered invalid by reason of this section: Bloomfield v. State, 86 O. S. 253.

A local option law for cities, allowing brewers in dry territory to sell outside of such territory, does not violate this section: *Lloyd v. Dollison*, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, in *State v. Dollison*, 68 O. S. 688]; see, also, *State v. Dollison*, 194 U. S. 445, 14 O. F. D. 380.

A local option statute which exempted business property was not on that account unconstitutional: *Columbus v. Jeffrey*, 2 O. N. P. (N.S.) 85, 14 O. D. (N.P.) 609 [affirmed, *Jeffrey v. State*, 4 O. C. C. (N.S.) 494].

This section of the constitution does not prevent the imposition of a license fee upon persons who use vehicles on the public streets of municipal corporations: *Sterling v. Bowling Green*, 5 O. C. C. (N.S.) 217, 16 O. C. D. 581.

A statute which imposes a higher license fee upon nets of the same kind which are used by steamboats from that imposed upon nets of the same kind used by rowboats, is invalid under this section: *Yensen v. State*, 7 O. N. P. 18, 9 O. D. (N.P.) 168.

A former statute, prescribing a license for after-acquired motor vehicles only, was declared unconstitutional as imposing burdens on certain citizens from which others of the same class were exempt: *Feasel v. State*, 6 O. N. P. (N.S.) 321, 18 O. D. (N.P.) 473.

A law which requires every plumber to undergo examination and obtain a license, but permits all members of a firm to pursue the business where one only has procured such license, does not operate equally upon all of a class, and is invalid: *State v. Gardner*, 58 O. S. 599.

An act providing for licensing stationary engineers which exempts those employed as engineers for three years before the passage of the act, grants special privileges and is invalid: *Harmon v. State*, 66 O. S. 249 [affirming *State v. Harmon*, 3 O. C. C. (N.S.) 399, 13 O. C. D. 292].

A statute which requires pawnbrokers to file weekly reports is valid: *Sanning v. Cincinnati*, 81 O. S. 142.

An act providing that conductors who had been employed two years would be exempt from the examination prescribed, was held to create favored classes and contravene this section: *Railway v. State*, 4 O. C. C. (N.S.) 126, 16 O. C. D. 348 [affirmed, without report, in *State v. Railway*, 70 O. S. 506].

A statute providing that any employe of a railway having power to direct another, is not a fellow servant of an employe having no such power, though in a different branch of the service, is not unconstitutional as granting special privileges (see G. C. § 9016): *Froelich v. Railway*, 5 O. C. C. (N.S.) 6, 14 O. C. D. 359; see, also, *Roe v. Railway*, 13 O. D. (N.P.) 260 [affirmed, 4 O. C. C. (N.S.) 284, 15 O. C. D. 628]. Contra: *Maltby v. Railway*, 13 O. D. (N.P.) 280; *Kane v. Railway*, 142 Fed. 682, 73 C. C. A. 672, 15 O. F. D. 188; *Kane v. Railway*, 133 Fed. 681, 67 C. C. A. 658, 14 O. F. D. 452 [reversing *Kane v. Railway*, 123 Fed. 474, 14 O. F. D. 213, 2 O. L. R. 27]; *Railway v. Kane*, 118 Fed. 223, 55 C. C. A. 129, 14 O. F. D. 193.

A statute which provided for paying to needy blind persons a pension of twenty-five dollars each, quarterly, from the county treasury, was held to be unconstitutional as an unreasonable discrimination: *Auditor of Lucas County v. State, ex rel.*, 75 O. S. 114 [reversing *Davies v. State, ex rel.*, 6 O. C. C. (N.S.) 417, 17 O. C. D. 593].

A statute providing free text books for poor children does not discriminate against those who have no children, nor deny to any the equal protection of the law: *Mooney v. Bell*, 8 O. N. P. 658, 11 O. D. (N.P.) 786.

A statute limiting the number of prisoners in state prisons to be employed in any one occupation is unconstitutional, as favoring certain people and denying the equal protection of law: *Baldwin Forging Co. v. Griffith*, 5 O. N. P. (N.S.) 566, 18 O. D. (N.P.) 261.

An act providing that sales of merchandise in bulk shall be void unless a list of creditors be sent the purchaser, is void as discriminating in favor of a limited class of creditors: *Miller v. Crawford*, 70 O. S. 207.

A statute which makes such sales presumptively fraudulent (G. C. § 11102, et seq.), has also been held to be unconstitutional in *Williams & Thomas Co. v. Preslo*, 84 O. S. 328.

A statute which exempts building and loan associations from the operation of the usury laws is not invalid (see G. C. § 9650): *Cramer v. Trust Co.*, 72 O. S. 395; *Loan Association v. Desnoyers*, 4 O. C. C. (N.S.) 337, 16 O. C. D. 352.

The statute which requires that coal be weighed before screening, for the purpose of determining the compensation of the miner, is invalid as not affording equal protection: *In re Preston*, 63 O. S. 428.

An act providing that benefits paid to a member of a fraternal organization shall not be appropriated for debts is unconstitutional, as conferring privileges on some of a class not enjoyed by others of the same class: *Williams v. Donough*, 65 O. S. 499.

Art.I, § 3. CONSTITUTION OF THE STATE OF OHIO OF 1851.

A statute which provided that the bonds of administrators, in excess of a certain amount, must be signed by surety companies is invalid by reason of this section: *State v. Robins*, 71 O. S. 273; *Haunts v. Lanman Co.*, 2 O. N. P. (N.S.) 405, 15 O. D. (N.P.) 64.

An act for the compulsory improvement of county ditches does not violate the provision against unequal legislation: *Taylor v. Crawford*, 72 O. S. 560 [reversing *Crawford v. Taylor*, 6 O. C. C. (N.S.) 278, 17 O. C. D. 245].

The Willis law, taxing the franchise of a corporation, is constitutional and does not deny the equal protection of the law: *Southern Gum Co. v. Laylin*, 66 O. S. 578; *State v. Bridge Co.*, 6 O. N. P. (N.S.) 55, 18 O. D. (N.P.) 273; see, also, *Telegraph Co. v. Mayer*, 28 O. S. 521; *State, ex rel., v. Ferris*, 53 O. S. 314; *Express Co. v. State*, 55 O. S. 69.

The legislature may alter charters of corporations in effect by subsequently enacting statutes permitting consolidation: *Dunham v. Kauffman*, 10 O. N. P. (N.S.) 49, 20 O. D. (N.P.) 274.

Statutes giving a gas company power to supply gas, even if construed as giving an exclusive privilege, are subject to attention by the legislative will, as this constitutional provision becomes a part of the charter: *Coke Co. v. Hamilton*, 146 U. S. 258, 7 O. F. D. 358.

2 Debates, 231, 326, 466-468, 476-483, 485-493, 498-550, 556-559, 688-693, 806, 826, 856, 870.

IV. NO IRREVOCABLE SPECIAL PRIVILEGES.

The legislature, in granting charters to railroad companies, did not violate this provision against special privileges: *State, ex rel., v. Sherman*, 22 O. S. 411.

A railroad corporation formed by a special statute prior to the adoption of the constitution of 1851, which takes advantage of a general law authorizing consolidation, which is passed after such constitution is adopted, makes itself subject to the provisions of such constitution (see this section and Art. XIII., § 2), and is subject to the general power of the legislature to regulate rates of fare: *Shields v. State*, 26 O. S. 86 [affirmed, *Shields v. State*, 95 U. S. 319, 4 O. F. D. 471].

A railway corporation which is subject to the provision of the present constitution and which is required by a statute passed after it is incorporated, to construct and maintain cattle guards at the crossings of its track with public highways, is not entitled to compensation for making or maintaining such cattle guards: *Railway v. Sharpe*, 38 O. S. 150.

A franchise of a street railway company, which was granted at a time when there was no statutory provision fixing its duration, is said to be perpetual if not terminated by the legislature; the legislature, however, having power to terminate it: *State, ex rel., v. Railway*, 1 O. C. C. (N.S.) 145, 14 O. C. D. 609 [affirmed, without report, in *State, ex rel., v. Railway*, 73 O. S. 363]; see, to same effect, *Railway v. Cleveland*, 137 Fed. 111, 14 O. F. D. 513.

If an ordinance already in effect requires a street railway to pave twelve feet of the street, a subsequent ordinance may require it to pave sixteen feet: *Cleveland v. Railroad*, 1 O. N. P. 413, 3 O. D. (N.P.) 92.

In connection with this section is to be construed § 2, Art. XIII, which declares that "corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed"; *State, ex rel., v. Cincinnati*, 47 O. S. 52.

While corporations with valuable franchises may be formed under general laws, all such laws may be altered or repealed: *Railway v. Telegraph Association*, 48 O. S. 390.

SECTION 3. The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances. (*See Const. 1802, Art. VIII, § 19.*)

See Const. 1802, Art. VIII. § 19.

The right of assembly can not be used to carry out an unlawful and criminal conspiracy to obstruct the operation of a railroad: *Thomas v. Railway*, 62 Fed. 803, 8 O. F. D. 263.

It was said in *Manufacturing Co. v. Labor Union*, 12 O. D. (N.P.) 748, that some injunctions against labor unions and their right to congregate have violated this provision of the constitution.

2 Debates, 231, 326, 462, 806, 826, 856, 870.

SECTION 4. The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the mil-

Of the right to assemble.

Of bearing arms; standing armies; subordination of military power.

itary shall be in strict subordination to the civil power. (*See Const. 1802, Art. VIII, § 20.*)

See Const. 1802, Art VIII, § 20.

"This clause in the constitution clearly shows the light in which the framers of this instrument viewed a resort to mercenary troops in any degree independent of the civil authority. They held such a force dangerous to liberty, and that unalterably and forever to regard it so, was a great and essential principle of liberty and free government. The determination was to constitute the militia, as only a portion of the executive authority, upon whom was devolved the duty of executing the laws and protecting its ministers from violence. It is declared a duty equally essential to liberty to regard even the militia a military force, to be forever kept under strict subordination to the civil authority. The fathers of the Republic had studied human nature deeply. Devoted to free institutions, they were jealous of any influence tending to their destruction. Hence the emphatic annunciation of the essential principle, that the military should be kept under strict subordination to the civil authority. Not a word is found in the constitution giving countenance to the opinion sometimes expressed, and more frequently felt, that the militia or the military force, instead of being a means to be employed by the executive department in executing the important duty of executing the laws, are a distinct department of the government, equal to either of the others, and independent of their control": *State v. Coulter*, W. 421.

It is a contempt of court to muster a militia company, with music, so near the court as to disturb its proceedings. The military must be subordinate to the civil power, or the country ceases to be free: *State v. Goff*, W. 78.

Officers of the militia are liable in contempt if they refuse to stop drilling their troops with music and firing, so near to the courthouse as to interfere with the business of the court: *State v. Coulter*, W. 421.

2 Debates, 231, 326, 462, 806, 826, 856, 870.

SECTION 5. The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury. (As amended September 3, 1912.)

Trial by jury.
Reform in civil
jury system.

Vote: "Yes," 345,686; "No," 203,953.

Original § 5 read as follows: "Sec. 5. [Trial by jury.] The right of trial by jury shall be inviolate. (*See Const. 1802, Art. VIII, § 8.*)

- I. What constitutes jury.
- II. Nature of right of jury.
- III. Specific illustration.

A. Fine or imprisonment.

- B. Appropriation proceedings.
- C. Other cases.
- IV. Waiver.

I. WHAT CONSTITUTES JURY.

See Const. 1802, Art. VIII, § 8.

See Art. I, § 10, note 5; Art. I, § 19, note 7; Art. XIII, § 5, note 6.

A jury is defined to be "a convenient number of citizens, selected and impartial, who, on particular occasions, or in particular causes, are vested with discretionary powers to try the truth of facts, on which depend the property, the liberty, the reputation and the lives of their fellow citizens." It is "a certain number of men sworn to inquire of and try a matter of fact, and declare the truth upon such evidence as shall be given them in a cause; and they are sworn judges upon evidence in matters of fact." "The occupying claimant laws of Ohio came under the consideration of the supreme court of the United States in the case of the *Bank of Hamilton v. Dudley*, 2 Peters, 133. In that case the court concede that the state has the power to secure to claimants of lands their possessions until paid for lasting improvements made by them on the land, but denies the power of the state, by its enactments, to 'change, radically, the mode of proceeding prescribed for the courts of the United States, or direct those courts, in a trial at common law, to appoint commissioners for the decision of questions which a court of common law must submit to a jury.' Such a proceeding, the court suppose, would conflict with the clause in the constitution of the United States which declares that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.' It appears to us obvious that the provision of the constitution just quoted applies only to the courts of the United States, and does not prescribe a rule of practice for the courts of a state. . . . Indeed, we are unable to discover wherein the law of Ohio conflicts with the constitution of

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Ohio. Were we to decide otherwise, there is a series of legislative acts, commencing with the organization of our government and continuing to this time, that we should be compelled to declare void. We allude to enactments providing juries in cases of forcible entry and detainer, for the trial of the rights of property, . . . for inquiry in cases of idiocy and lunacy," etc.: *Hunt v. McMahon*, 5 O. 132.

The term "jury," as used originally in the constitution, implied twelve men who must unanimously concur in a verdict in order to render one. Accordingly, a statute which provided for a jury of six men in the probate court did not provide a jury within the meaning of the constitutional provision: *Work v. State*, 2 O. S. 296.

In a case where a jury is necessary, a trial in the probate court before a jury of six men is in violation of the constitution; and the prosecuting witness can not be compelled to pay the costs of such proceeding: *Sovereign v. State*, 4 O. S. 489.

II. NATURE OF RIGHT OF JURY.

By the first of these sections (Art. I, § 5), the right of jury trial is recognized to exist, and its continuance unimpeached is provided for. By the last (Art. I, § 10) this right is declared to belong to every person accused of any crime or offense, in any court of the state. What, then is this right? It is nowhere defined or described in the constitution. It is spoken of as something already sufficiently understood and referred to as a matter already familiar to the public mind. The same article furnishes other examples of the same generality of expression. By § 8: "The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion, the public safety require it." In what does the privilege of this great bulwark of personal liberty consist? The constitution furnishes no answer, nor was it necessary that it should. If ages of uninterrupted use can give significance to language, the right of jury trial and the habeas corpus stand as representatives of ideas as certain and definite as any other in the whole range of legal learning. The institution of the jury referred to in our constitution, and its benefits secured to every person accused of crime, is precisely the same in every substantial respect as that recognized in the great charter and its benefits secured to the freemen of England, and again and again acknowledged in fundamental compacts as the great safeguard of life, liberty and property; the same, brought to this continent by our forefathers, and perseveringly claimed as their birthright, in every contest with arbitrary power, and, finally, an invasion of its privileges prominently assigned as one of the causes which was to justify them, in the eyes of mankind, in waging the contest which resulted in independence. Nor did their affection for it then diminish or cool. They made it a cornerstone in erecting the state governments; and after the adoption of the federal constitution, without a provision securing it, they did not rest satisfied until they had proposed and carried an amendment, giving to every person accused of crime in the courts of the Union, "the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." In the ordinance of July 13, 1787, which first extended civil government over the territory northwest of the river Ohio, it was made an unalterable article of compact that "the inhabitants of the said territory shall always be entitled to the benefit of the writ of habeas corpus and of the trial by jury." Upon the organization of the state government in 1802, provisions, substantially the same as those in the present constitution, were inserted in the bill of rights. It thus appears that persons accused of crime have, for every moment of time since civil government existed within the territory of this state, by fundamental laws, been secured in the right of trial by jury. An institution that has so long stood the trying tests of time and experience, that has so long been guarded with scrupulous care, and commanded the admiration of so many of the wise and good, justly demands our jealous scrutiny when innovations are attempted to be made upon it. It remains to consider what were the distinguishing features of this mode of trial as it existed at common law, and as it has always been known and used in this country. . . . Our opinion is that the essential and distinguishing features of the trial by jury, as known at common law, and generally, if not universally, adopted in this country, were intended to be preserved, and its benefits secured to the accused in all criminal cases, by the constitutional provisions referred to; that it is beyond the power of the general assembly to impair the right, or materially change its character; that the number of jurors can not be diminished, or a verdict authorized short of a unanimous concurrence of all the jurors. . . . We do not intend to imply a doubt of the constitutionality of the act allowing juries before justices of the peace, composed of six men. Wherever facts are to be found in any proceeding, in which a jury was not required by the common law, a jury of any number may be authorized within the discretion of the legislative body. Juries did not belong to these inferior courts at the

common law, and so long as an appeal is provided for the common law courts from their determinations, it is clear no constitutional objection can arise, whether facts are found by the magistrate or by the aid of a jury of any number of men: *Work v. State*, 2 O. S. 296.

The act of May 1, 1854, "to extend the jurisdiction of justices of the peace," etc. (52 O. L. 100), is not unconstitutional, although it makes no provision for the trial, by a jury of twelve men, of actions commenced in virtue of such extended jurisdiction. "It is true that the act may subject the defendant to a trial before a justice of the peace before he can obtain a trial by jury; still, the right of trial by jury remains unimpaired and perfect. The mode of obtaining it may be more inconvenient than heretofore. But on this subject a discretion is given to the legislature, which must be so far abused as to be clearly violative of the substantial right, before this court can interfere to nullify legislative action": *Norton v. McLeary*, 8 O. S. 205.

Where a case is neither a criminal prosecution nor a proceeding according to common law, in which trial by jury is guaranteed, it is not error to deprive a man of a jury trial: *Prescott v. State*, 19 O. S. 184.

The right intended to be secured by this section was the right as recognized by the common law, and includes an action for money only: *Dunn v. Kanmacher*, 26 O. S. 497.

The three most important constitutional rights of one accused of felony are (1) trial by jury, (2) compulsory process for witnesses, and (3) assistance of counsel: *Dille v. State*, 34 O. S. 617.

The right to trial by jury depends on the nature of the relief sought, and can not be abridged, but it may be extended: *Gunsaulus v. Pettit*, 46 O. S. 27.

This section has been repeatedly held not to enlarge or modify the right of trial by jury as it existed prior to the adoption of the constitution: *Terry v. State*, 3 O. C. C. (N.S.) 593, 14 O. C. D. 111.

A jury from a city may try an accused for an offense committed outside of the city, but within the jurisdiction of the court: *Fendrick v. State*, 17 O. D. (N.P.) 73, 4 O. L. R. 350 [affirmed, *State v. Fendrick*, 77 O. S. 298].

This section was intended to guarantee the right of trial by jury as it existed under the constitution of 1802: *Ames v. State*, 11 O. N. P. (N.S.) 385.

III. SPECIFIC ILLUSTRATION.

A. Fine or imprisonment. This section does not apply to prosecution under ordinances which authorize a penalty by fine only upon a summary conviction under a police regulation, although payment may be enforced by imprisonment: *Fletcher v. State*, 18 O. C. C. 674, 7 O. C. D. 316; *Wells v. State*, 1 O. N. P. (N.S.) 309, 14 O. D. (N.P.) 196; see, to same effect, *Ward v. State*, 5 O. D. (N.P.) 230.

A mayor may refuse a jury trial to one charged with keeping a saloon open on Sunday, where the penalty is fine only, even though imprisonment may be used to enforce payment: *Schlagel v. State*, 3 O. N. P. (N.S.) 429, 16 O. D. (N.P.) 295.

A statute which authorizes a penalty by fine only, upon a summary conviction under a police regulation, or of an immoral practice prohibited by law, although imprisonment, as a means of enforcing payment of the fine, is authorized, is not in conflict with either §§ 5 or 10 of Art. I, of the constitution, on the ground that no provision is made for a trial by jury in such cases: *Inwood v. State*, 42 O. S. 186.

B. Appropriation proceedings. The assessment of the value of property appropriated for public purposes is not one of the cases for which trial by jury is secured by this provision of the constitution. "The only way in which we can ascertain the true meaning of this clause is by making inquiry whether, before the constitution was framed, jury trial was known in such cases in the territory of Ohio. . . . On what principle is it that juries are dispensed with in the greater number of our courts—in courts of equity, courts of admiralty, courts martial and courts of justices of the peace? Magna charta declares that no man shall be deprived of life, liberty or property, but by the judgment of his peers or the law of the land. Mr. Sullivan (§§ 39, 40) remarks that, as juries were unknown in those courts before the great charter, their disuse constituted a part of the law of the land; and therefore, although that charter was the first great instrument which solemnly guaranteed jury trial to Englishmen, yet it has never been supposed that that institution constituted a part of the machinery of those courts. . . . He who will take the trouble to examine our laws, as well before as since the formation of our constitution, will find that they are uniformly regarded as an appendage to the courts only. No juries are ever mentioned but such as are auxiliary to the administration of justice in some court. . . . Objections of this kind should ever be listened to with attention and

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earnestness; for, although, to decide upon the constitutionality of a law, is a duty which no judge should court, yet it is also one from which no judge should shrink": *Willyard v. Hamilton*, 7 O. (pt. 2) 111. (Art. I, § 19, of this constitution secures trial by jury in such cases.)

An act for the appropriation of land for roads does not violate this section if it provides for an appeal to probate court where a jury may be had: *Reckner v. Warner*, 22 O. S. 275.

In condemnation of land for a ditch, the compensation to the owner must be determined by a jury, but not the question of route or benefit of ditch: *Emig v. Commissioners*, 5 O. N. P. 471, 5 O. D. (N.P.) 459.

Legislature may determine the method of the appropriation of land by the city, so long as it does not preclude a jury to assess the compensation: *Cincinnati v. Mueller*, 8 O. N. P. (N.S.) 195, 19 O. D. (N.P.) 533.

The right of a turnpike company to take toll is "property" which can not be taken away without a jury trial, and statute providing a forfeiture if road is not kept in repair is unconstitutional: *Turnpike Co. v. Waechter*, 2 O. C. C. (N.S.) 21, 15 O. C. D. 605.

The act of April 20, 1874 (71 v. 146), gave a penalty of one hundred and fifty dollars to the party aggrieved by a railroad corporation for overcharging for the transportation of passengers or property. It was held that where action for penalty stood for judgment on the petition, it was not error to refuse to impanel a jury to assess damages: *Railroad v. Cook*, 37 O. S. 265.

The act to secure the compulsory education of children, and in extreme cases to commit without trial by jury, is valid and constitutional: *Quigley v. State*, 5 O. C. C. 638, 3 O. C. D. 310 [affirmed by supreme court, without report, *Quigley v. State*, 27 Bull. 332].

A statute which authorizes commitments to a reform farm or an industrial school without the intervention of a jury is not unconstitutional by reason of this provision: *Prescott v. State*, 19 O. S. 184; *Millard v. Commissioners*, 5 O. C. C. (N.S.) 145, 7 O. C. D. 115.

A statute which authorized a commitment of a homeless child to a house of refuge was held to be valid in *House of Refuge v. Ryan*, 37 O. S. 197.

A statute providing that if a corporation abandons proceedings to appropriate land, a judgment for attorney fees may be entered, is unconstitutional in taking judgment for wrong without a jury trial: *Gas Co. v. Wiler*, 1 O. N. P. (N.S.) 277, 14 O. D. (N.P.) 164.

C. Other cases. The provisions of the act of January 9, 1871 (68 v. 6), conferring jurisdiction upon courts of common pleas to appoint guardians of the property of persons incapable of taking care of and preserving their property, by reason of intemperance and habitual drunkenness, are not in violation of the provisions of this section: *Hagany v. Cohnon*, 29 O. S. 82.

An act giving probate court power to declare a toll road vacated and abandoned and to become a free road without intervention of a jury, is unconstitutional: *Turnpike Co. v. Parks*, 50 O. S. 568 [approved and followed in *Turnpike Co. v. Gay*, 50 O. S. 583].

A law requiring fire escapes on buildings, and for violation, permitting an injunction against use of the building, is not void because it does not provide for trial by jury, but is void if not of uniform operation in the state: *Cincinnati v. Steinkamp*, 54 O. S. 284 [affirming *Cincinnati v. Steinkamp*, 9 O. C. C. 178, 6 O. C. D. 85].

One who is charged with contempt of court for refusing to answer a question as a witness, is not entitled under this provision to a trial by jury: *Ammon v. Johnson*, 3 O. C. C. 263, 2 O. C. D. 149.

The constitution of 1851 changes a motion for a nonsuit to a motion to take the case from the jury; and this is proper where there is no dispute in regard to the facts: *Beucker v. Baker*, 21 O. C. C. 540, 11 O. C. D. 642.

This section does not render invalid the statute which creates the the State Liability Board of awards and confers powers thereon (G. C. § 1465-37, et seq.; 102 v. 525): *State, ex rel., v. Creamer*, 85 O. S. 349.

IV. WAIVER.

A provision that, on a plea other than "guilty," if the defendant did not demand a trial by jury, the probate judge should proceed to try the issue, was held valid: *Daily v. State*, 4 O. S. 57.

A provision which gives to the accused the right to have a trial by jury, or not, at his election, does not violate this provision: *Dillingham v. State*, 5 O. S. 280.

The constitutional provision that guarantees to the accused a trial by jury does not prohibit adopting any other mode of trial upon consent of the accused: *Craig v. State*, 49 O. S. 415.

If parties can have a jury trial, but do not because they do not ask for it, the jurisdiction of the probate court can not be defeated on such ground: *Doan v. Biteley*, 49 O. S. 588.

The waiver of a trial by jury upon an action arising on a contract, when the opposite party or his attorney does not appear, is valid: *Railway v. Construction Co.*, 49 O. S. 681.

Under a statute which provided for trial by jury, if the jury was not wanted, the accused must affirmatively waive his right to a jury before he can be tried without one; and his failure to demand a jury is said to be not such waiver: *Simmons v. State*, 75 O. S. 346.

A statute which imposes a liability upon a county for mob violence within its limits is valid and constitutional, and does not interfere with the right of trial by jury: *Commissioners v. Church*, 62 O. S. 318 [affirming *Mitchell v. Commissioners*, 10 O. C. D. 801, which reversed *Mitchell v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262, and reversing *Caldwell v. Commissioners*, 15 O. C. C. 167, 8 O. C. D. 56, which affirmed *Caldwell v. Commissioners*, 4 O. N. P. 249, 6 O. D. (N.P.) 367].

This section does not render invalid G. C. §§ 1249, et seq., which authorize the state board of health to require a municipal corporation to construct a sewage system. *State Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113].

A waiver of trial by jury in an assault and battery case should, as a matter of safety, be noted upon the record: *Evans v. State*, 3 O. C. C. (N.S.) 23, 13 O. C. D. 103 [affirmed, without report, in *Evans v. State*, 68 O. S. 700].

2 Debates, 231, 326, 327, 462, 806, 826, 857, 870.

SECTION 6. There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime. (*See Const. 1802, Art. VIII, § 2.*)

Of slavery and involuntary servitude.

See Const. 1802, Art. VIII, § 2.

This provision was incorporated into this constitution from the ordinance of 1787: *Strader v. Graham*, 10 How. 82.

2 Debates, 231, 327, 806, 826, 857, 870.

SECTION 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction. (*See Const. 1802, Art. VIII, §§ 3, 25.*)

Of the rights of conscience; the necessity of religion and knowledge.

See Const. 1802, Art. VIII, §§ 3, 25.

- I. Cited.
- II. Right of conscience.
- III. Sunday observance.

- IV. Religious exercises in public schools.
- V. Encouragement of schools.

I. CITED.

State, ex rel., v. Shearer, 46 O. S. 275; *State, ex rel., v. Toledo*, 3 O. C. C. (N.S.) 468, 13 O. C. D. 327; *State v. Board of Education*, 8 O. N. P. 186, 11 O. D. (N.P.) 422; *Mooney v. Bell*, 8 O. N. P. 658, 11 O. D. (N.P.) 786; *Reid v. Board of Education*, 6 O. N. P. (N.S.) 526, 16 O. D. (N.P.) 414; *Board of Education v. Sawyer*, 7 O. N. P. (N.S.) 401, 19 O. D. (N.P.) 1.

II. RIGHT OF CONSCIENCE.

"Neither Christianity nor any other system of religion is a part of the law of this state. We sometimes hear it said that all religions are tolerated in Ohio; but the expression is not strictly accurate; much less accurate is it to say that one religion is a part of our law, and all others only tolerated. It is not by mere toleration that

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every individual here is protected in his belief or disbelief. He reposes not upon the leniency of government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the constitution, are beyond the control or interference of any human authority. We have no union of church and state, nor has our government ever been vested with authority to enforce any religious observance simply because it is religious. Of course, it is no objection, but on the contrary, is a high recommendation to a legislative enactment, based upon justice or public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal, and not over things spiritual. Thus, the statute prohibiting common labor on the Sabbath, (29 O. L. 161), could not stand for a moment as the law of this state, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty. For no power over things merely spiritual has ever been delegated to the government, while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the constitution. Acts evil in their nature, or dangerous to the public welfare, may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion could shield a murderer, ravisher, or bigamist; for community would be at the mercy of superstition, if such crimes as these could be committed with impunity, because sanctioned by some religious delusion": *Bloom v. Richards*, 2 O. S. 387.

The giving of christian science treatment for a fee, for the cure of disease, is practicing medicine within the meaning of the statutes regulating such practice in this state. The statute making it a misdemeanor to give such treatment for a fee is not an interference with the rights of conscience and of worship, conserved by § 7 of the bill of rights, and is not on that ground unconstitutional: *State v. Marble*, 72 O. S. 21.

Legislation prohibiting anyone from treating a disease for a fee, excepting such persons as have prescribed qualifications, is a valid exercise of the police power of the state, and is constitutional: *State v. Marble*, 72 O. S. 21.

The act regulating the practice of medicine in this state exacts reasonable qualifications and excludes no one possessing them, and it is not void as discriminating against christian scientists in that it prescribes that anyone possessing certain qualifications may practice osteopathy and does not make especial provision for those who wish to practice christian science: *State v. Marble*, 72 O. S. 21.

No one is rendered incompetent to be a witness on account of religious belief; nevertheless, every one offered as a witness in a court must take an oath or affirmation before giving testimony: *Clinton v. State*, 33 O. S. 27.

A person who believes in the existence of a Supreme Being, who will, either in this life or the life to come, inflict punishment for false swearing, may be sworn as a witness: *Clinton v. State*, 33 O. S. 27.

III. SUNDAY OBSERVANCE.

A statute which was construed as making invalid sales of merchandise on Sunday, was held to be constitutional in *Sellers v. Dugan*, 13 O. 489.

Neither Christianity, nor any other system of religion, is a part of the law of this state. We sometimes hear it said that all religions are tolerated in Ohio; but the expression is not strictly accurate—much less accurate is it to say, that one religion is a part of our law, and all others only tolerated. It is not by mere toleration that every individual here is protected in his belief or disbelief. He reposes not upon the leniency of government, or the liberality of any class or sect of men, but upon his natural indefeasible rights of conscience, which, in the language of the constitution, are beyond the control or interference of any human authority. We have no union of church and state, nor has our government ever been vested with authority to enforce any religious observance, simply because it is religious.

Of course, it is no objection, but, on the contrary, is a high recommendation, to a legislative enactment, based upon justice or public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal and not over things spiritual. Thus the statute upon which the defendant relies, prohibiting common labor on the Sabbath, could not stand for a moment as a law of this state, if its sole foundation was the christian duty of keeping that day holy, and its sole motive to enforce the

observance of that duty. For no power over things merely spiritual, has ever been delegated to the government, while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the constitution. Acts evil in their nature, or dangerous to the public welfare, may be forbidden and punished, though sanctioned by one religion and prohibited by another; but this creates no preference whatever, for they would be equally forbidden and punished if all religions permitted them. Thus, no plea of his religion could shield a murderer, ravisher, or bigamist; for community would be at the mercy of superstition, if such crimes as these could be committed with impunity, because sanctioned by some religious delusion.

We are, then, to regard the statute under consideration as a mere municipal or police regulation, whose validity is neither strengthened nor weakened by the fact that the day of rest it enjoins is the Sabbath day. Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so fixed as to happen at regularly recurring intervals, are too obvious to be overlooked. It was within the constitutional competency of the general assembly to require this cessation of labor, and to name the day of rest. It did so by the act referred to, and, in accordance with the feelings of a majority of the people, the christian Sabbath was very properly selected. But, regarded merely as an exertion of legislative authority, the act would have had neither more nor less validity had any other day been adopted: *Bloom v. Richards*, 2 O. S. 387.

Legally considered, our Sunday act is merely a civil regulation, having no connection with religion, and founded on principles of public policy alone: *McGatrick v. Wason*, 4 O. S. 566.

A statute making it an offense to play ball on Sunday neither requires nor prohibits any religious observance and does not violate this section: *State v. Powell*, 58 O. S. 324; see, to same effect, *State v. Goode*, 5 O. N. P. 179, 5 O. D. (N.P.) 281; *State v. Black*, 5 O. N. P. 179.

IV. RELIGIOUS EXERCISES IN PUBLIC SCHOOLS.

The constitution of the state does not enjoin or require religious instruction, or the reading of religious books, in the public schools of the state: *Cincinnati v. Minor*, 23 O. S. 211.

The legislature having placed the management of the public schools under the exclusive control of directors, trustees, and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given, or what books shall be read therein: *Cincinnati v. Minor*, 23 O. S. 211.

The courts have no power to interfere against a regulation adopted by a board of education requiring that the Bible be read in schools on the plea that it interferes with conscience: *Nessle v. Hum*, 1 O. N. P. 140, 2 O. D. (N.P.) 60.

A school-teacher may be discharged for breach of contract if she reads the Bible in the school room contrary to the orders of the school board which has its authority from the legislature: *Board of Education v. Paul*, 7 O. N. P. 58, 10 O. D. (N.P.) 17.

V. ENCOURAGEMENT OF SCHOOLS.

The policy of encouraging schools was expressed in the ordinance of 1787, and reasserted in the constitution of 1802, Art. VIII, § 3: *Theological Seminary v. Little*, 2 O. C. C. (N.S.) 540, 15 O. C. D. 609.

"The system of public education in Ohio is the creature of the constitution and statutory laws of the state. . . . It is left to the discretion of the general assembly, in the exercise of the general legislative power conferred upon it to determine what laws are 'suitable' to secure the organization and management of the contemplated system of common schools, without express restriction, except that 'no religious or other sect or sects shall ever have any exclusive right to, or control of, any part of the school funds of the state'" (Art. VI, § 2): *State, ex rel., v. McCann*, 21 O. S. 198.

A compulsory education law is valid: *Quigley v. State*, 5 O. C. C. 638, 3 O. C. D. 310 [affirmed, without report, in *Quigley v. State*, 27 Bull. 332].

General Code § 7686, authorizing and empowering the board of education of each school district, "to make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of smallpox among the pupils attending or eligible to attend the schools of the district, as in its opinion the safety and interests of the public require," is a valid enactment, not repugnant to the constitution of the state of Ohio, nor violative of the fourteenth amendment to the constitution of the United States. And under the power thereby conferred, boards of education, in the exercise of a sound discretion, may

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exclude from the public schools all children who have not been vaccinated. The enactment of said statute by the general assembly was but a reasonable exercise of the police power of the state, and under its provisions, the validity of the action taken by a board of education in excluding from the public schools all children who have not been vaccinated, or who do not furnish a physician's certificate excusing them from vaccination, does not depend upon the actual existence of smallpox in the school district or community, nor upon the apprehended epidemic of that disease.

Whether a rule or regulation adopted by the board of education under favor of the provisions of above G. C. § 7686, is a reasonable rule or regulation, is to be judged of in the first instance by the board of education, and the courts will not interfere unless it be clearly shown that there has been an abuse of official discretion: *State, ex rel., v. Board of Education*, 76 O. S. 297.

Under this section school lands may be exempted from taxation: *Martindill v. Sanger*, 8 O. N. P. 506, 11 O. D. (N.P.) 727.

The act of March 21, 1881, appropriating money to repair the buildings of the Ohio university, was passed by the general assembly in the discharge of the duty imposed upon it by this section, viz.: to pass suitable laws to encourage schools and the means of instruction: *State, ex rel., v. Oglevee*, 37 O. S. 1.

In pursuance of the last clause, the legislature has from time to time provided for the organization of teachers' institutes: *Burton v. Board of Education*, 5 O. N. P. (N.S.) 294, 18 O. D. (N.P.) 67.

No injury or unreasonable discrimination is caused by special rates to school children on their way to and from school, secured from a railroad: *Shryock v. Railway*, 6 O. L. R. 19, 53 Bull. 86.

A statute providing separate schools for colored children is constitutional: *State v. Cincinnati*, 19 O. 178; see, to the same effect, *Van Camp v. Board of Education*, 9 O. S. 406; *State v. McCann*, 21 O. S. 198.

General Code § 4862, which permits women otherwise properly qualified, to vote and to be voted for, for member of the board of education, is valid: *State, ex rel., v. Columbus*, 9 O. C. C. 134, 6 O. C. D. 36 [affirmed, without report, in *Mills v. Board of Elections*, 54 O. S. 631].

2 Debates, 231, 327, 328, 462, 463, 466, 469, 806, 826, 857, 870.

Of the writ of
habeas corpus.

SECTION 8. The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it. (*See Const. 1802, Art. VIII, § 12.*)

See Const. 1802, Art. VIII, § 12.

"In what does the privilege of this great bulwark of personal liberty consist? The constitution furnishes no answer, nor was it necessary that it should. If ages of uninterrupted use can give significance to language, the right of jury trial and the habeas corpus stand as representatives of ideas as certain and definite as any other in the whole range of legal learning": *Work v. State*, 2 O. S. 297.

"The 'privilege' of the writ of habeas corpus is secured by our national and state constitutions to every citizen. It can only be suspended or withheld in cases of rebellion or invasion, when the public safety may require it. Subject to that reserved right of the national or state governments, to be employed in the extreme cases named, each citizen is vested with this ancient and sacred shield of liberty. To the judicial department of the government is delegated the duty of enforcing applications for its invaluable benefits, when properly demanded. Our statute relating to the subject gives to the judges of the courts, separately at chambers, jurisdiction of the subject-matter in all cases, except when the person is convicted of a crime or offense, and stands committed for it; or where he is committed for treason or felony, the punishment whereof is capital, plainly expressed in the warrant of commitment. Not only is such jurisdiction given to the judges, but when the person who is unlawfully deprived of his liberty, makes his application to one of them, as provided in the law, for the benefits of the writ, it is made the duty of such judge forthwith to issue it. The exempted cases of convicted persons who stand committed, and of treason or felony, punishable capitally, are the only restrictions upon the power of a single judge. The common law courts are clothed with power adequate for those and for all other cases which may arise. In the exercise of this power by a single judge, or a court, every case of unlawful imprisonment may be reached and examined into. . . . 'No matter where or how the chains of captivity were forged, the power of the judiciary, in this state, is adequate to crumble them to the dust, if an individual is deprived of his liberty, contrary to the law of the land': *Ex parte Collier*, 6 O. S. 55.

A habeas corpus can not be used as a summary process to review errors in the sentence of a court of competent jurisdiction. If the sentence is void, habeas corpus lies; if voidable or erroneous, a writ of error is the appropriate remedy: *Ex parte Shaw*, 7 O. S. 81.

It is legally incompetent for the supreme court of Ohio to withdraw, by habeas corpus, persons in custody of the district court of the United States, charged with violation of an act of congress, while the proceedings are pending, on the ground that the act of congress is unconstitutional: *Ex parte Bushnell*, 8 O. S. 599.

"If a court, having jurisdiction over an offense punishable by a valid and constitutional law, pronounces sentence, and the commitment under that sentence is returned on habeas corpus, the form of the indictment, or the want of proper allegations therein, can not be inquired into; for this process can not be converted into a writ of error. In such case the court, having jurisdiction over the offense, must itself pronounce the law of the case, and, until reversed by some competent tribunal, is conclusive on all other courts, and puts an end to all collateral inquiry on habeas corpus. Hence it is that the statute itself, relating to this writ, excepts from those who are entitled to the benefit of it, all persons convicted of a crime or offense for which they stand committed, plainly and specifically expressed in the warrant of commitment": *Ex parte Bushnell*, 9 O. S. 77.

Where the court erroneously refuses to grant an order of discharge, and instead thereof remands the prisoner to jail, and continues the cause, the order remanding the prisoner to jail, so long as it remains unreversed, is a valid and legal authority to the sheriff for retaining the prisoner in custody, and the order can not be reviewed and reversed, or the prisoner discharged, by a proceeding in habeas corpus before another tribunal: *Ex parte McGehan*, 22 O. S. 442.

Habeas corpus lies to release a prisoner who has no means to pay his fine, unless the sentence making imprisonment the alternative reads, "till fine and costs are paid or secured to be paid": *Ex parte Mullaney*, 8 O. N. P. 49, 10 O. D. (N.P.) 419.

2 Debates, 231, 328, 806, 826, 857, 870.

SECTION 9. All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted. (*See Const. 1802, Art. VIII, §§ 12, 13.*)

Bailable offenses; of bail, fine, and punishment.

See Const. 1802, Art. VIII, §§ 12 and 13.

"Who is to decide whether the proof be evident, or the presumption great? Most undoubtedly the same authority which prescribes the amount of bail, and passes upon the sufficiency of the sureties; the judges of the court who exercise this same power in all analogous cases known to our laws. . . . The appeal must be addressed to the discretion of the court; a sound legal discretion it is true, but one that can only be moulded into action by the evidence brought to bear upon the indictment": *State v. Summons*, 19 O. 139.

After verdict of guilty, but before sentence, except in capital cases, where the proof is evident or the presumption great, the court may, in its discretion, take recognizance for the appearance of the prisoner to receive his sentence: *Hampton v. State*, 42 O. S. 401.

There is no statute providing for a hearing with regard to bail after an indictment for murder in the first degree has been returned; but we have no doubt that the court, in a case where there are reasons, may hear testimony and, if satisfied, allow defendant to furnish bail: *Martin v. State*, 17 O. C. C. 406, 9 O. C. D. 621.

If a prisoner in a workhouse is unruly and disorderly, the punishment to be administered must be left, to a great extent, to the discretion of the superintendent, within reason: *Rose v. Toledo*, 1 O. C. C. (N.S.) 321, 14 O. C. D. 540.

This section limits the power of the court, so that the failure to provide a maximum penalty does not invalidate a statute making barbering on Sunday a misdemeanor: *In re Stamfeal*, 9 O. C. C. (N.S.) 553, 19 O. C. D. 664.

An act requiring all bonds to be executed by surety companies is invalid, in curtailing the constitutional right to offer individuals as bail in criminal cases: *Haunts v. Lanman Co.*, 2 O. N. P. (N.S.) 405, 15 O. D. (N.P.) 64; *State v. Robins*, 71 O. S. 273.

2 Debates, 231, 328, 806, 826, 857, 870.

SECTION 10. Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the peni-

Of the trial of accused persons and their rights. Depositions by state and comment on failure of accused to testify in criminal cases.

tentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witness face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense. (As amended September 3, 1912.)

Vote: "Yes," 291,717; "No," 227,547.

Original § 10 read as follows: "Sec. 10. [Of the trial of accused persons and their rights.] Except in cases of impeachment, and cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and in cases of petit larceny and other inferior offenses, no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district, in which the offense is alleged to have been committed; nor shall any person be compelled, in any criminal case, to be a witness against himself, or be twice put in jeopardy for the same offense. (See Const. 1802, Art. VIII, § 11.)"

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| I. Applied, cited, construed, referred to, etc. | VII. Compulsory attendance of witnesses. |
| II. Inferior offenses. | VIII. Public trial. |
| III. Indictment by grand jury. | IX. Trial by impartial jury. |
| IV. Right of accused to appeal and defend. | A. Nature of the right. |
| V. Right of accused to know nature of accusation. | B. Cases in which right to jury does not exist. |
| VI. Right of accused to meet witnesses face to face. | X. Trial in county or district. |
| | XI. Compelling one to be a witness against himself. |
| | XII. Twice in jeopardy. |

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Hartnett v. State, 42 O. S. 568; State v. Knight, 54 O. S. 330; Truman v. Walton, 59 O. S. 517; State v. Carl, 71 O. S. 259; Gage v. State, 1 O. C. C. (N.S.) 221, 14 O. C. D. 724 [reversed, State v. Gage, 72 O. S. 210]; Lindsey v. State, 4 O. C. C. (N.S.) 409, 14 O. C. D. 1 [affirmed, Lindsey v. State, 69 O. S. 215]; August v. Finnerty, 10 O. C. C. (N.S.) 433, 20 O. C. D. 330; Wellsville v. O'Connor, 1 O. C. C. (N.S.) 253, 14 O. C. D. 689; State v. Stichtenoth, 8 O. N. F. (N.S.) 297, 19 O. D. (N.P.) 623; In re Strauss, 197 U. S. 324; State v. Cox, 21 O. D. (N.P.) 535.

II. INFERIOR OFFENSES.

There are, however, many offenses, made so by statute, which are but quasi criminal, and where the legislature may direct the mode of redress, untrameled by this constitutional provision. Such is Sabbath breaking, selling spirituous liquors on Sunday, and the disturbance

of religious meetings, with many others (Swan's Stat. 255, 256.) Long acquiescence in these enactments goes far to show the construction which has been placed by all on the constitution, and that there may be many offenses, though decidedly immoral and mischievous in their tendencies, that are not crimes, but at most only quasi criminal. Of such, jurisdiction may be given to a justice of the peace, or the mayor of an incorporated town: *Markle v. Town Council of Akron*, 14 O. 586.

By the tenth section of the first article of the constitution, a presentment or indictment of a grand jury is dispensed with, "in cases of petit larceny and other inferior offenses." How such offenses should thereafter be prosecuted, depended entirely upon legislative discretion. But, it is said, this dispensation only extends to offenses inferior in grade to petit larceny. We can not adopt such a construction. Indeed, to do so, would be to leave the whole matter to mere conjecture. It is very evident that petit larceny is simply named as one of a class of offenses; and equally so, that the class was intended to embrace all offenses for which a punishment less than imprisonment in the penitentiary is provided. This was a classification so long used in our laws, and so well understood, as to leave no doubt that it was the one intended to be adopted by the convention: *Dillingham v. State*, 5 O. S. 280.

The jurisdiction conferred on police courts by § 167 of the municipal code (66 v. 176), (see G. C. § 4527, et seq.), extended to petit larceny and all such other inferior offenses as are not required by Art. I, § 10, of the constitution, to be prosecuted by indictment: *Cole v. State*, 29 O. S. 226 [cited in *Davis v. State*, 32 O. S. 24].

"Under the constitution of 1851 (Art. I, § 10), in cases where the punishment is less than imprisonment in the penitentiary, an indictment is unnecessary, unless provided for by statute. *Dillingham v. The State*, 5 Ohio St., 280 282. But in so ordaining, the framers of the constitution did not intend to substitute, in such cases, the proceeding by criminal information as it exists at common law. Reasons for this conclusion are stated in *Gates v. State*, 3 O. S. 293, but there are others equally cogent": *Eichenlaub v. State*, 36 O. S. 140.

General Code § 3664 authorizing cities and villages to provide for the punishment of known thieves and pick-pockets does not contravene this section: *Morgan v. Nolte*, 37 O. S. 23.

Cases for the violation of village ordinances, sent to the court of common pleas in pursuance of G. C. § 4539, should be tried in that court upon the affidavit filed before the mayor. Indictment of the accused is neither necessary nor proper: *Finnical v. Cadiz*, 61 O. S. 494; see, also, *Kubach v. State*, 1 O. N. P. (N.S.) 405, 14 O. D. (N.P.) 726.

III. INDICTMENT BY GRAND JURY.

"An individual accused of a crime, can not be compelled to answer the charge until the same has been made through the intervention of a grand jury, in the form of a presentment, or indictment. Should the legislature pass an act to compel an individual to answer, without this prerequisite, such act would be in violation of the constitution, and void. No such power is, as I believe, claimed by any of the numerous advocates for legislative supremacy. But this clause in the constitution has nothing to do with the particular forms of indictments. These forms will vary according to the nature of the criminal acts prohibited. The legislature has the power to declare what acts are criminal, and they have the same power to prescribe the forms of indictments for the commission of such criminal acts. They can not dispense with the indictment itself, but they can dispense with some of its technical formalities": *Lougee v. State*, 11 O. 68; see, to the same effect, *Wolf v. State*, 19 O. S. 248; *Turpin v. State*, 19 O. S. 540.

Where, on an indictment for grand larceny presented against H. L. a person was arraigned, and pleaded in abatement that his name is not H. L. but W. H. L. and the plea was found to be true, and the name thus disclosed was entered on the minutes of the court, and the trial and further proceedings were had in pursuance of G. C. § 13626, it was held that this statute is not in contravention of this section of the constitution: *Lasure v. State*, 19 O. S. 43.

A regular grand jury under our statutes consists of fifteen jurors: *State v. Laning*, 7 O. N. P. (N.S.) 281, 18 O. D. (N.P.) 672.

IV. RIGHT OF ACCUSED TO APPEAR AND DEFEND.

"The court has no discretionary power over the right itself for it can not be denied. And hence it has no right to prevent the accused from being heard by counsel, even if the evidence against him be clear, unimpeached and conclusive in the opinion of the court. But the exercise of the right is subject to judicial control, to the extent that is necessary to prevent the abuse of it": *Dille v. State*, 34 O. S. 617.

If the court gives a reasonable time for the presentation of the case it may fix the time which it will allow to the accused for arguing his case to the jury: *Weaver v. State*, 24 O. S. 584.

It is no ground for the reversal of a judgment that a motion for a new trial was made, argued and overruled in the absence of the prisoner, where no objection was made till after sentence: *Griffin v. State*, 34 O. S. 299.

Where an order is made by the court, on motion of the prosecuting attorney, under G. C. § 13658 that the jury view the premises where the alleged crime was committed, in charge of the sheriff and a person appointed by the court to point out the premises, it is error to permit such view in the absence of the accused and against his objection: *Hotelling v. State*, 3 O. C. C. 630, 2 O. C. D. 366.

V. RIGHT OF ACCUSED TO KNOW NATURE OF ACCUSATION.

The indictment or information must aver all the material facts which it is necessary to prove to produce a conviction, and with such reasonable certainty as to advise the accused what he may expect to meet on the trial: *Dillingham v. State*, 5 O. S. 280; *Davis v. State*, 7 O. (pt. 1) 205; *Lougee v. State*, 11 O. 68; *Lamberton v. State*, 11 O. 282; *Fouts v. State*, 8 O. S. 98; *State v. Owen*, 3 O. N. P. 181, 4 O. D. (N.P.) 163.

An indictment is the written accusation originating from the ordeal of the grand inquest of the county, before any person can be put upon his trial for a high crime. As a protection to innocence and a safeguard against the oppressive and arbitrary exercise of power, it is provided in the bill of rights, among the fundamental principles of our government, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury," and also, further, that, "in any trial, in any court, the party accused shall be allowed to demand the nature and cause of the accusation against him, and to have a copy thereof." The indictment, in the contemplation of the constitution, is that written statement of the nature and cause of the accusation, with all the certainty and substantial requirements heretofore sanctioned and declared essential by the settled law of the country. Why these provisions in the fundamental law of the state? Why the ceremony and expense of a grand jury to find and return an indictment setting out the "nature and cause of the accusation?" And why guarantee to the accused the right to demand and have a copy of the indictment, if the written averments, descriptive of the crime, are not required to be made with certainty and truth, charging the overt act with all the substantial and distinguishing ingredients which the statute creating the offense has made essential to constitute the crime? If any one or more of the substantial ingredients or distinguishing constituents of the crime may be omitted, the written accusation required would become a mere snare by which to mislead and entrap the accused on his trial. Where either purpose, intent or knowledge is, by the statute, made a distinguishing characteristic of a crime, it is as essential that such purpose, intent or knowledge should be averred in the description of the act charged as the crime as any other material and distinguishing ingredient. If, when a man's life is in jeopardy by his being put upon his trial for murder in the first degree, the written accusation against him be sufficient, when the overt act described in it as the crime amounts to nothing more than manslaughter under the specific provisions of the statute creating and defining the offense, the constitutional guaranty of a written charge, setting out the nature and cause of the accusation, is worse than a mere vain thing, and the ceremonial of a grand jury, to charge the accused on presentment and indictment, worse than a mockery and mere farce. It is a deception and a snare, instead of that humane protection against the oppressive exercise of arbitrary power which has been the boast of our country: *Fouts v. State*, 8 O. S. 98.

All specific acts, necessary elements of the crime charged, and indispensable in order to secure a conviction, must be specifically set forth in the indictment: *State v. Lang*, 5 O. N. P. (N.S.) 369, 18 O. D. (N.P.) 53.

The indictment must state every circumstance of knowledge, intention or action that constitute the criminal design: *Anderson v. State*, 7 O. (pt. 2) 250.

An indictment of a statutory offense must set forth the charge in the words of the statute describing the offense: *Hess v. State*, 5 O. 1.

It is sufficient in an indictment for manslaughter to charge the crime in accordance with G. C. § 13583, which is not repugnant to the constitution: *Wolf v. State*, 19 O. S. 248 [followed in *Williams v. State*, 35 O. S. 175].

The provision in G. C. § 13590 which declares that it shall be sufficient in any indictment, where it is necessary to allege an intent to defraud, without alleging an intent to defraud any particular person, is not in conflict with this provision: *Turpin v. State*, 19 O. S. 540.

Felonies must be prosecuted by indictment; and while the legislature has the power to prescribe forms and dispense with many formal allegations in indictments, there is a limit to such power; and it is clear that there is no authority in the legislature to enact, or in the court to determine, that that shall be a sufficient indictment which fails to inform the accused of the offense with which he is charged. An indictment for illegal voting held to be fatally defective in failing to designate the election at which the defendant voted: *Lane v. State*, 39 O. S. 313.

An indictment for stealing bank bills must aver a "scienter" or it is defective: *Gatewood v. State*, 4 O. 387.

An affidavit charging the having for sale a drug "which differed from the standard of strength laid down in said U. S. Pharmacopoeia," without showing wherein it differed is indefinite and violates this section of the bill of rights: *Groenland v. State*, 4 O. N. P. 122, 6 O. D. (N.P.) 313 [affirmed, by the supreme court, without report, *State v. Groenland*, 39 Bull. 2].

An indictment, in general terms, for embezzlement is not sufficient where the state intends to show numerous acts of such occurring at different times. A bill of particulars may be demanded: *State v. Langan*, 1 O. D. (N.P.) 261.

An affidavit so drawn that the act set forth may or may not be an infraction, so that it is necessary to wait until the prosecution has introduced its evidence before the defendant can know whether or not he must make any defense, is fatally defective: *Arata v. State*, 12 O. D. (N.P.) 730.

Where the accused goes to trial under the general issue raised by his plea of not guilty, he is deemed to waive any insufficiency in the indictment: *State v. Pohl*, 13 O. D. (N.P.) 386.

A charge that accused falsely represented he was buying goods exclusively from a certain firm is insufficient under this section. The indictment should further state names of other parties with whom he was dealing, the nature of transactions and their date and amount: *State v. Mina*, 15 O. D. (N.P.) 487, 3 O. L. R. 31.

The act of April 16, 1906, establishing juvenile courts and establishing procedure therein, does not contravene any of the provisions of the state constitution: *Travis v. State*, 12 O. C. C. (N.S.) 374, 21 O. C. D. 492.

VI. RIGHT OF ACCUSED TO MEET WITNESSES FACE TO FACE.

This, like numerous other provisions in the bill of rights, is a constitutional guaranty of one of the great fundamental principles well established, and long recognized at common law, both in England and in this country. The scope and operation of it are clearly defined and well understood, in the common law recognition of it; and the assertion of it in the fundamental law of the state, was designed neither to enlarge nor curtail it in its operation, but to give it permanency, and secure it against the power of change or innovation.

The object of this provision, manifestly, is to exclude testimony *by depositions, by requiring it to be given orally, in the presence of the accused, on the trial. The admission of testimony by depositions against the accused in a criminal cause, would often afford the prosecutor great advantages over him, as well as furnish, at times, opportunities for abuses beyond the reach of detection by the defendant. Deprived of this right, the accused would often be without the opportunity of cross-examination, without the means of seeing, hearing or knowing the persons who testify against him, and without the advantage of an oral examination of the witnesses before the jury which is to decide upon his case. But important as this right is, as established at common law, and secured by the constitution, it has application to the matter of the personal presence of the witness on the trial, and not to the subject-matter or competency of the testimony to be given. The requirement that the accused shall be confronted, on this trial, by the witnesses against him, has sole reference to the personal presence of the witnesses, and it in no wise affects the question of the competency of the testimony to which he may depose. When the accused has been allowed to confront, or meet face to face, all the witnesses called to testify against him on the trial, the constitutional requirement has been complied with. This was done on the trial of the case before us, in the district court, Mary Clinch was not a witness on that trial. Being dead, it was an impossibility that she could be a witness on that trial. Logan, however, who was a witness, and did testify, did meet the accused face to face on the trial. The provision in the bill of rights was complied with: *Summons v. State*, 5 O. S. 325.

Testimony proving the statements made by a deceased witness on oath, at a former trial between the same parties, being one of the established exceptions to the rule that hearsay is incompetent as evidence, the admission of a witness to give evidence of this kind in a criminal

Art.I, § 10. CONSTITUTION OF THE STATE OF OHIO OF 1851.

case, does not contravene this provision of the constitution: *Summons v. State*, 5 O. S. 325.

Evidence of dying declarations, is not forbidden by this section, the objection to such evidence going to the competency of the evidence, and not to the competency of the witness: *Summons v. State*, 5 O. S. 325; see, also, *Robbins v. State*, 8 O. S. 131; *Montgomery v. State*, 11 O. 424; *Wagers v. Dickey*, 17 O. 439.

This section applies to oral testimony of witnesses; and not to the introduction of public records or other instruments of writing that may become competent evidence in the trial of a criminal case: *Folliard v. State*, 14 O. C. C. (N.S.) 205.

VII. COMPULSORY ATTENDANCE OF WITNESSES.

General Code § 13662, limiting character witnesses to ten, in certain cases, does not violate this section: *State v. Stout*, 49 O. S. 270.

VIII. PUBLIC TRIAL.

An order made by the court of common pleas, during the trial of an indictment for a felony, to the effect that in view of the testimony expected to be given by witnesses next to be called, the court would continue the trial, during the taking of the testimony of witnesses likely to give immoral or obscene testimony, in the small court room, that the sheriff should admit no one to said room except the jury, defendant's counsel and members of the bar and newspaper men, and one other person, a witness for defendant, exceeds the power of the court in the premises, and its enforcement is a denial to defendant of his constitutional right to a public trial: *State v. Hensley*, 75 O. S. 255.

IX. TRIAL BY IMPARTIAL JURY.

A. Nature of right. By this section the right of trial by jury is declared to belong to every person accused of any crime or offense, in any court of the state: *Work v. State*, 2 O. S. 297.

An ordinance of an incorporated village provided that persons keeping billiard tables, to be used by others, should be imprisoned for a term not exceeding thirty days. It was held that, although such an ordinance may have been authorized by § 35, of the municipal corporation act, as amended April 5, 1856 (50 v. 223), yet no corresponding change in the powers and jurisdiction of mayors of incorporated villages, so as to furnish the means of a trial by jury, having been made, a trial and sentence to imprisonment, by the mayor, of a person charged with a violation of the ordinance, are illegal: *Thomas v. Ashland*, 12 O. S. 124.

In view of the provisions of Art. 1, § 2 and Art. 11, § 10, it would be a grave question whether the legislature could create a new offense to be punished by imprisonment, and provide that the trial for such offense should be before a single judge, without a jury. A power which the legislature itself could not exercise, very certainly can not be delegated to a municipal corporation: *Thomas v. Ashland*, 12 O. S. 124.

"The right of the accused to an impartial jury can not be abridged. To secure this right it is necessary that the body of triers should be composed of men indifferent between the parties, and otherwise capable of discharging their duty as jurors. Whether, in the practical administration of justice, the right is infringed, is necessarily a judicial question; and whether, in a particular case, a proposed juror has the state of mind which will render him impartial, is a question of fact, which it is the duty of the court trying the case to decide. This duty is enjoined by the constitution, and, it is true, can not be impaired, or the right abridged, by legislative action. The previous demeanor of a juror, the information he may have received, or the opinions he may have entertained or expressed, are only evidence of the state of his mind, and are material only as they may tend to show a free judgment of the case, the existence of prejudice against either of the parties, or his indifference between them": *Cooper v. State*, 16 O. S. 328; see, also, *Martin v. State*, 16 O. 364.

A statute which permits a juror to serve, although he has formed or expressed an opinion as to the guarantee of the accused, if he says that he can render an impartial verdict notwithstanding such opinion, is not a violation of this section: *Cooper v. State*, 16 O. S. 328; see, also, *Palmer v. State*, 42 O. S. 596.

In a summary proceeding before the probate court under the act of February 26, 1843 (51 O. L. 354), on complaint of an administrator against a party suspected of embezzling, concealing, or conveying away the property or effects of the estate, the court has no constitutional power to render judgment against the party so charged, except for such property and effects as he, on his examination, admits himself guilty of

having embezzled, concealed or carried away; and to the extent that the statute professes to authorize a judgment in cases where there is a controversy between the parties, it is unconstitutional: *Howell v. Fry*, 19 O. S. 556.

Where a person called as a juror in a criminal case formed an opinion by reading what purported to be the testimony of witnesses he is disqualified as a juror, but if such opinion was founded upon hearsay, newspaper comment, etc., and the court is satisfied that he could render an impartial verdict he is competent: *Frazier v. State*, 23 O. S. 551 [followed in *McHugh v. State*, 42 O. S. 154].

A juror being examined on his *voir dire*, stated that from what he had talked and read about trials of codefendants he had formed an opinion against the defendant which it would require testimony to remove, although he had nothing personally against him, and that the fact that the defendant had been indicted would have weight with him unless defendant proved himself not guilty, and as the case stands would require the defendant to prove his innocence; but it did not appear that he had talked with or read the testimony of any witness, or had talked with anyone claiming to have knowledge of the facts, and it was shown, on further examination, that his opinion rested principally on the suspicion that the defendant was one of the gang that committed the crime, but that he did not assume to know that to be a fact, and that if the court should instruct that he need not consider the fact that the defendant had been indicted he could lay aside that fact and not consider it an evidence against him, and finally that, notwithstanding any previous bias, opinion or prejudice, he could render a fair and impartial verdict according to the law, and the evidence, and that court, so believing, overruled the defendant's challenge for cause. It was held that the facts do not show an abuse of discretion in so overruling the challenge: *Lindsey v. State*, 69 O. S. 215; *McHugh v. State*, 42 O. S. 154, and *Goins v. State*, 46 O. S. 457, approved and followed.

This section was intended to guarantee the right of trial by jury as it existed under the constitution of 1802: *Ames v. State*, 11 O. N. P. (N.S.) 385.

As to trial by jury, see, also, Art. I, § 5, and notes; Art. I, § 19; Art. XIII, § 5.

B. Cases in which right to jury does not exist. Section 8, of the act of April 16, 1857 (54 v. 163), "to authorize the establishment of houses of refuge," and the statutes subsequently enacted enlarging the operation of that act so as to authorize commitments to "the state reform farm" (55 v. 27) (see G. C. § 2084), are not repugnant either to this section or to § 5 of this article, although they make no provision for a trial by jury: *Prescott v. State*, 19 O. S. 184.

A statute, which authorizes a penalty by fine only, upon a summary conviction under a police regulation or of an immoral practice prohibited by law, although imprisonment, as a means of enforcing the payment of the fine is authorized, is not in conflict with either § 5 or § 10, of Art. I, of the constitution, on the ground that no provision is made for a trial by jury in such cases: *Inwood v. State*, 42 O. S. 186.

The provisions of G. C. § 13692, which provide that "if the offense charged is murder, and the accused be convicted by confession in open court, the court shall examine the witnesses, and determine the degree of the crime, and pronounce sentence accordingly," are constitutional and valid: *Craig v. State*, 49 O. S. 415.

In a proceeding for contempt in refusing to answer as a witness, the witness is not entitled to a trial by jury: *Annon v. Johnson*, 3 O. C. C. 263, 2 O. C. D. 149.

The act to secure the compulsory education of children and in extreme cases to commit without trial by jury is valid: *Quigley v. State*, 5 O. C. C. 638.

In prosecutions where the penalty is a fine only, the accused is not entitled under this section to a trial by jury: *Ward v. State*, 5 O. N. P. 81, 5 O. D. (N.P.) 230.

Imprisonment imposed to enforce the payment of a fine and costs under a police regulation is not a part of the penalty within the purview of the guaranty of jury trial: *Schlagel v. State*, 3 O. N. P. (N.S.) 429, 16 O. D. (N.P.) 295.

An accused may be deprived of a trial by jury when the penalty imposed by the statute for the crime is only a fine: *Editorial*, 37 Bull. 258.

The constitutional right of trial by jury is not infringed when the option is given to the accused to have the issue tried by the court or the jury, and he submits the cause to the court: *Dillingham v. State*, 5 O. S. 280.

General Code § 13451, which authorizes the probate court to try the issue upon a plea other than that of guilty by the defendant did not demand a trial by jury is not rendered invalid by this provision of the constitution: *Dailey v. State*, 4 O. S. 57.

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The issue made by the plea of not guilty to an action of ejectment, can not be tried by the court, without the waiver by the parties of a jury trial: *Slocum v. Swan*, 4 O. S. 162.

Upon the trial of an issue raised by a plea of not guilty, in the higher grades of crime, it is not in the power of the accused to waive a trial by jury, and, by consent, submit to have the facts found by the court, so as to authorize a legal judgment and sentence upon such finding: *Williams v. State*, 12 O. S. 622.

In a prosecution under G. C. §§ 13423 and 13432, et seq., upon a plea of not guilty, before the justice can acquire jurisdiction to hear the complaint and enter final judgment in the case without the intervention of a jury, the accused must waive his right to a jury trial.

Such waiver must clearly and affirmatively appear upon the record, and it can not be assumed or implied by a reviewing court from the silence of the accused, or his mere failure to demand a jury: *Simmons v. State*, 75 O. S. 346; *Dailey v. State*, 4 O. S. 57, and *Billigheimer v. State*, 32 O. S. 435, distinguished.

The defendant is not entitled as a matter of right to have the cause tried by the court instead of a jury: *Ickes v. State*, 16 O. C. C. 31, 8 O. C. D. 442 [affirmed, *Ickes v. State*, 63 O. S. 549, 59 N. E. Rep. 233].

A waiver of trial by jury in an assault and battery case should, as a matter of safety, be noted upon the record.

But where the bill of exceptions is silent as to a demand for a jury, or refusal to waive the right of trial by jury, in an assault and battery case tried in a police court, a reviewing court, in view of the fact that a police court is a court of record and has jurisdiction to try such a case, will assume that a jury was waived: *Evans v. State*, 3 O. C. C. (N.S.) 23, 13 O. C. D. 103 [affirmed, without report, *Evans v. State*, 68 O. S. 700].

X. TRIAL IN COUNTY OR DISTRICT.

On the charge of uttering and publishing a forged instrument (G. C. § 13083), the place where the instrument was uttered and published, and not the place where the forgery was committed, determines the jurisdiction: *Lindsey v. State*, 38 O. S. 507.

If the forged instrument has been uttered and published in this state, with intent to defraud by means of an innocent agent here, it is no defense to an indictment, in the proper county in this state, to show that the accused never was within the state, or that he owes allegiance to another state or government: *Lindsey v. State*, 38 O. S. 507.

The guaranty contained in § 10, of the bill of rights, that an accused person shall have "a trial by an impartial jury of the county or district in which the offense is alleged to have been committed," does not require that the trial shall take place within the judicial district where the indictment is found; and under G. C. § 13636, the court in which an indictment is returned may, on motion of the accused, if an impartial jury can not be had there, order that he be tried in any adjoining county: *State, ex rel., v. McCarty*, 52 O. S. 363.

General Code § 12659, which provides that certain offenses, such as nuisances, shall be held to be committed in any county whose inhabitants are aggrieved thereby is not rendered invalid by this provision of the constitution: *American Strawboard Co. v. State*, 70 O. S. 140 [affirming *State v. Strawboard Co.*, 13 O. D. (N.P.) 373].

Under authority of G. C. § 13636, regulating the change of venue in criminal cases, the court having jurisdiction of the cause in the county of the offense, if it be made to appear to the court that a fair and impartial trial can not be had therein, may, upon application of the prosecuting attorney on behalf of the state, direct that the cause be tried in an adjoining county. Said section thus construed, is not repugnant to § 10, of Art. I, of the constitution of Ohio: *State v. Durfinger*, 73 O. S. 154.

In the case of *State v. Arrison*, 10 Dec. Rep. 379, 20 Bull. 474, which was an indictment for murder, referred to in *Fouts v. State*, 8 O. S. 98, an order was made by Parker, J., of the Hamilton county common pleas, changing the venue to the county of Butler; but the presiding judge (Clark, J.), after full argument, held that this could not be done, in view of this constitutional provision.

In a prosecution for the violation of local option statutes it is not necessary that the jury be selected from the municipal corporation in which such offense was committed: *Lloyd v. Dollison*, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, *State v. Dollison*, 68 O. S. 688, which was affirmed in *State, ex rel., v. Dollison*, 194 U. S. 445, 14 O. F. D. 380].

In all cases where crime is charged, the jury district, to meet constitutional requirements, should be coextensive with the trial district; and it follows that one charged with an offense committed beyond

municipal limits, but within police court jurisdiction as fixed by 97 O. L. 7, can not be legally tried by a jury drawn from residents of the municipality only: *Fendrick v. State*, 9 O. C. C. (N.S.) 49, 18 O. C. D. 724, 4 O. L. R. 350.

Section 2, of an act of the general assembly, entitled, "An act to compel parents to obtain their children," passed and approved April 28, 1908 (99 O. L. 228), arbitrarily enacting that "the offense shall be held to have been committed in any county of this state in which said child * * * may be at the time such complaint is made," is repugnant to Art. I, § 10, of the constitution and void: *In re Wyant*, 8 O. N. P. (N.S.) 207.

An act extending jurisdiction of police courts within the limits of the county, and in cases where imprisonment is part of penalty excluding citizens from that part of county from jury service contravenes this section: *State v. Voris*, 8 O. N. P. 16, 10 O. D. (N.P.) 451.

General Code § 13636, authorizing change of venue when impartial trial can not be had does not contravene this section: *State v. Geiger*, 3 O. L. R. 626.

General Code § 6308, which provides that actions for injury to person or property caused by the negligence of the owner of any motor vehicle may be brought by the party in the county where the injured party resides and that summons may issue to the sheriff of any county in the state wherein the defendant resides, is valid and constitutional: *Allen v. Smith*, 84 O. S. 283.

XI. COMPELLING ONE TO BE A WITNESS AGAINST HIMSELF.

The act of April 20, 1874 (71 v. 146), which gave penalty of \$150.00 to be recovered by civil action, to the party aggrieved by a railroad corporation overcharging for the transportation of passengers or property, and which allows the allegations in a petition, not denied by answer, to be taken as true, did not violate the principle guaranteed by this section, that no person in any criminal case shall be compelled to be a witness against himself: *Railroad v. Cook*, 37 O. S. 265; G. C. §§ 9002 and 9003.

It is not a violation of the constitutional provision, that no person shall be compelled in a criminal case to be a witness against himself, for the trial judge to require him, over the objection of his counsel, to stand up for better identification by the prosecuting witness: *Coles v. State*, 3 O. C. C. (N.S.) 420, 13 O. C. D. 313.

The provision "no person shall be compelled in any criminal case to be a witness against himself" is a privilege and may be waived: *Haberty v. State*, 8 O. C. C. 262, 4 O. C. D. 462.

It is not error for the court, *sui sponte*, to charge the jury that: "The fact that the defendant has not gone upon the witness stand and testified, does not excuse the state from the full measure of proof to which I have called your attention, for it is the privilege of the defendant either to testify in his own behalf or to decline to do so, resting his denial of the offense solely upon his plea of 'not guilty'": *Tate v. State*, 9 O. C. C. (N.S.) 287, 19 O. C. D. 410 [affirmed, *Tate v. State*, 76 O. S. 537].

When one is subpoenaed to appear as a witness before a tribunal created by law and that one is under investigation as to a criminal act alleged to have been committed by him, nothing said by him then and there can be the predicate of any indictment against him, unless he volunteer to become such a witness with a full knowledge of the possible or probable results to him. The intent to thus become a volunteer must be clear, definite and certain. Article I, § 10, of the constitution does not mean he can not be asked self-incriminating questions, nor does it mean he must claim a privilege against self-incrimination. Such a witness under such circumstances is exempt from becoming a witness at all: *State v. Cox*, 11 O. N. P. (N.S.) 305.

A law compelling witnesses to testify at an investigation of elections, and which provides that such testimony shall not be used in criminal prosecution, does not contravene this section and witnesses may be committed for contempt in refusing to testify: *Steuer v. McConnell*, 8 O. N. P. 205, 10 O. D. (N.P.) 573.

This section was invoked as a reason for refusing to admit in evidence involuntary confessions in criminal cases: *State v. Strong*, 12 O. D. (N.P.) 698.

In an action by a wife for recovery of money lost by her husband in betting on horse races in a pool room of defendant, the requirement that defendant answer pertinent interrogations attached to petition does not contravene this section: *Kleimeyer v. Payne*, 3 O. L. R. 386.

XII. TWICE IN JEOPARDY.

"The constitutional provision extends the common law maxim, which was limited to felonies, to all grades of offenses; and it is but the application to the administration of criminal justice, of a more general maxim of jurisprudence, that no one shall be twice vexed for one and the same cause. On this maxim rests the whole doctrine of *res judicata*. The object of incorporating it into the fundamental law was to render it, as respects criminal causes, inviolable by any department of the government": *State v. Behimer*, 20 O. S. 572.

"It is the right of the state, and one of the most solemn and responsible of its duties, to punish crime; and it is the absolute right of any one accused of a crime, to demand 'a speedy public trial by an impartial jury,' and a verdict declaring his guilt or innocence, according to the due course of law. The one is indispensably necessary to the safety of the community and the preservation of peace and order, and the other for the protection of the innocent, and to prevent the oppression, which might otherwise be practiced, by those having charge of state prosecutions. The problem has always been to preserve intact both of these important rights; and the object has been completely accomplished, by holding the accused liable to answer until, in the regular course of judicial proceedings, the tribunal charged with the issue, without molestation or interference, has had the fullest and amplest opportunity to pass upon the question of his guilt; and by making every interference, on the part of the government, by which a verdict is prevented, while a reasonable hope remains that one may be rendered an absolute bar to his further prosecution. If a verdict can not be obtained upon one trial, another may be lawfully had; and the unavoidable delay which ensues, is the fault of no one. For the better protection of the accused, the law requires unanimity in the jury, before a verdict can be rendered; but to allow, on the one hand, the ignorance, perversity or even honest mistake, of a single juror to paralyze the administration of justice, and turn loose upon the community the most dangerous offenders, or, on the other, to allow the government to trifle with the constitutional safeguards of the accused, would equally subvert the foundation principles upon which the criminal code is administered": *Dobbins v. State*, 14 O. S. 493.

When the defendant, in a criminal prosecution, is discharged under G. C. §§ 13685 and 13686, on the ground that he has not been brought to trial within the time therein limited, the order of discharge is to be regarded, not as a mere temporary release of the prisoner from confinement, but as a final judgment in the cause, and a bar to all subsequent prosecutions for the same crime or offense: *Ex parte McGehan*, 22 O. S. 442.

A jury charged with the trial of a capital case, after long deliberation unable to agree upon a verdict, may be discharged by the court, and the accused held to a further trial, without any infringement of this provision. The power to do so, against his consent, only exists in cases of absolute necessity, and when the jury has considered the cause for such a length of time as to leave no reasonable expectation that they will be able to agree upon a verdict: *Dobbins v. State*, 14 O. S. 493; *Poage v. State*, 3 O. S. 229; *Hurley v. State*, 6 O. 399.

If a court, in a criminal case, after a jury has retired to consult on their verdict, discharges them without the assent of the prisoner, and without the existence of a cause for which they might lawfully be discharged, the prisoner can not be again tried for the same offense: *Poage v. State*, 3 O. S. 229.

Though the existence of the power was once doubted, it is now well settled that the court has the power, at the instance of the defendant, after a verdict of conviction, to grant a new trial, without infringing this provision of the constitution. . . . The power has been uniformly exercised in this state, when, in the judgment of the court, a proper case arose: *State v. Behimer*, 20 O. S. 572.

The right to review a conviction, on error or otherwise, is not guaranteed by the constitution but depends solely on statutory provision: *Wagner v. State*, 42 O. S. 537.

During progress of a trial on an indictment for "shooting," the evidence showed that the prosecuting witness was not struck by the bullet, and the jury was discharged without prejudice to the prosecution. Upon a further indictment for "shooting at," the defendant pleaded in bar the former indictment, and the proceedings thereon, to which a demurrer interposed by the state was sustained. The evidence was identical with the evidence at the trial under the first indictment; the court, upon error, overruled the demurrer and sustained the plea, on the ground that, under the first indictment as well as under the second, the defendant could have been found guilty of an assault; and the jury having been sworn, after a plea of not guilty to a valid indictment, the accused was thereby in jeopardy, and should be discharged: *Mitchell v. State*, 42 O. S. 383.

Where the first count of an indictment charges the defendant with keeping a place where intoxicating liquors are "kept for sale, given away, or furnished for beverage purposes," in violation of G. C. § 6130, et seq., and the second count charges him with keeping a place where intoxicating liquors are sold in violation of G. C. § 13195, each count covering the same period of time, and the evidence at the trial establishes the fact that during all such period, the defendant was the keeper of but one place where intoxicating liquors were sold, there is but one offense, and it is error for the court, on a verdict of guilty under each count, to inflict the penalties prescribed by each of said sections: *Weaver v. State*, 74 O. S. 53.

A judgment of the supreme court, on habeas corpus, releasing the relator from confinement in virtue of a trial, conviction and sentence, because the relator had not been extradited to be tried for the offense charged in the indictment is not a bar to a second arrest, trial, conviction and sentence: *Ex parte McKnight*, 3 O. N. P. 255, 4 O. D. (N.P.) 284; see *Ex parte McKnight*, 48 O. S. 588.

The reversal of the judgment in a criminal case places the state, and defendant secures a reversal of a verdict, which was silent as to the first and second counts and found him guilty under the third count of the indictment; he can not thereafter maintain a plea in bar to the first and second counts: *State v. Dickerson*, 7 O. N. P. (N.S.) 208, 19 O. D. (N.P.) 48.

A plea of guilty of selling intoxicating liquor on Sunday in an action which was prosecuted as a first offense, but might have been prosecuted as a second offense, is a bar to a subsequent prosecution of the same defendant in another court for the same sale charged as a second offense: *State v. Lynch*, 7 O. N. P. (N.S.) 365.

A person convicted of an assault and battery may upon the death of the person assaulted be indicted for manslaughter: *State v. Ross*, 4 O. D. (N.P.) 5.

Article V, of the amendments to the constitution of the United States does not operate as a limitation of the power of the state governments over their own citizens, but is exclusively a restriction upon federal power: *Prescott v. State*, 19 O. S. 184.

2 Debates, 231, 328, 329, 330, 463, 476, 806, 826, 857, 870.

SECTION 11. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted. (*See Const. 1802, Art. VIII, § 6.*)

Of the freedom of speech and of the press; of libels.

See Const. 1802, Art. VIII, § 6.

Cited: *Manufacturing Co. v. Labor Union*, 12 O. D. (N.P.) 748.

Cited in dissenting opinion: *McCormick v. Local Unions*, 22 O. C. D. 165.

Cited by mistake: *Haunts v. Lanman Co.*, 2 O. N. P. (N.S.) 405, 15 O. D. (N.P.) 64.

The liberty of the press, properly understood, is not inconsistent with the protection due to private character. It has been well defined as consisting in "the right to publish, with impunity, the truth, with good motives, and for justifiable ends, whether it respects government, magistracy or individuals": *Cincinnati Gazette Co. v. Timberlake*, 10 O. S. 548.

While a full, impartial and correct account of a trial in a court of justice, unaccompanied by defamatory comments may, in general, be published with impunity, yet this privilege does not extend to the publication of preliminary proceedings merely, which are of a purely ex parte character, such as a statement in detail of the contents or substance of an affidavit, made before a police magistrate, with a view to the arrest of a party, thereby charged with crime. Such publication can be justified only by showing the truth of the charge: *Cincinnati Gazette Co. v. Timberlake*, 10 O. S. 548 [see the same case below, *Timberlake v. Cincinnati Gazette Co.*, 1 D. 320].

An elector who is an attorney has the right to criticize the judgments and conduct of judges in a decent and respectful manner, but no man has a right to degrade and intimidate a public officer and bring his office into contempt by the publication of libelous matter at any time, and the fact that such officer is a candidate for reelection will not excuse such conduct. One who claims the protection of the con-

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stitution, Art. I, § 11, must also, and at all times, be held responsible for abuse of the privilege: *In re Thatcher*, 80 O. S. 492.

In an action for libel, malice is inferred upon proof of the publication of defamatory matter, whatever the intention, unless published in the performance of some duty, legal or moral, or in the exercise of some right or privilege. But where the publication is found not to be defamatory in the sense of constituting a libel per se, malice is not presumed and there can be no recovery in the absence of proof of special damage: *Leader Printing Co. v. Nethersole*, 84 O. S. 118.

To constitute a publication respecting a person libelous per se, it must appear that the publication reflects upon the character of such person by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession. Hence a published statement in a newspaper of and concerning a woman that she "had hysterics", the same not containing any imputation upon her as an individual, or in respect to her profession or business, is not, though untrue, per se libelous, and can not be made a ground of recovery of damages in the absence of proof of special damage: *Leader Printing Co. v. Nethersole*, 84 O. S. 118.

A court of chancery has no jurisdiction to restrain the publication of a lewd, obscene and lascivious pamphlet merely because it is libel, and will injure plaintiff in his reputation and cause the public to believe he is unfit to hold office: *Judson v. Zurhorst*, 10 O. C. C. (N.S.) 289, 20 O. C. D. 9 [affirmed, without report, *Judson v. Zurhorst*, 78 O. S. 446].

Libel consists in the abuse of that constitutional right by maliciously writing or printing of another, any language or representation which is false, and the natural tendency or effect of which is to injure such other person in his business standing or reputation in the community in which he lives and is known, or in his trade or business, and hold him up to ridicule or contempt or in any way to lessen him in public esteem: *Kahn v. Times-Star*, 8 O. N. P. 616, 10 O. D. (N.P.) 599 [affirmed, without report, *Times-Star v. Kahn*, 52 O. S. 662].

The publisher of a newspaper has exactly the same rights and responsibilities to exactly the same extent, for the abuse of that right as any other citizen: *Kahn v. Times-Star*, 8 O. N. P. 616, 10 O. D. (N.P.) 599 [affirmed, without report, *Times-Star v. Kahn*, 52 O. S. 662].

Verbal statements by union men made to nonunion men, describing an existing condition, can not be prevented by injunction: *Boiler and Engine Co. v. Benner*, 14 O. D. (N. P.) 357.

No man can be held responsible in a civil proceeding for publishing the truth; but he is responsible for publishing a falsehood, unless he shows a justification in the occasion or circumstances. To publish that which is false and injurious to another, must be deemed an abuse. So if the first publication of false and injurious matter be an abuse of the right of speech, or of the liberty of the press and a wrongful act, it can confer no right on another to repeat or republish. This is also an abuse, for which the party repeating or republishing becomes responsible. And it is now well settled that this responsibility can not be escaped by giving the name of the author or first publisher. And no such doctrine has at any time obtained countenance in reference to a libel or written slander. To repeat what a man hears in conversation is quite a different matter from writing it out and publishing it in a newspaper. Where such libel consists in publishing the fact of an accusation having been made against another, the defendant must show the accusation to be true: *Timberlake v. Gazette Co.*, 12 Dec. Rep. 646. 2 Debates, 231, 330, 468, 559, 806, 826, 857, 870.

Transportation,
etc., for crime.

SECTION 12. No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate. (*See Const. 1802, Art. VIII, §§ 16, 17.*)

See Const. 1802, Art. VIII, §§ 16 and 17.

No man's property can be forfeited as a punishment for crime. Hence there is no power to deprive a man of the use of his property, unless it be necessary in order to abate an existing nuisance: *Miller v. State*, 3 O. S. 475.

Felony and feloniously are, with us, words without meaning, except as their import is fixed by statute: See obiter in *Mitchell v. State*, 42 O. S. 383.

Statutes of descent can not be interpreted to exclude a murderer from inheriting in the absence of specific statutory provision therefor: *Deem v. Millikin*, 6 O. C. C. 357, 3 O. C. D. 491 [affirmed, without report in *Deem v. Milliken*, 53 O. S. 668].

A beneficiary under a life insurance policy who murders the insured, thereby forfeits all right under the policy: *Filmore v. Insurance Co.*, 82 O. S. 208.

2 Debates, 231, 320, 464, 467, 468, 806, 826, 857, 870.

SECTION 13. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law. (*See Const. 1802, Art. VIII, § 22.*)

Of quartering troops.

See Const. 1802, Art. VIII, § 22.

2 Debates, 231, 330, 806, 826, 857, 870.

SECTION 14. The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized. (*See Const. 1802, Art. VIII, § 5.*)

Search warrants and general warrants.

See Const. 1802, Art. VIII, § 5.

This safeguard against unreasonable seizures, the legislature has undertaken to carry into effect, by prescribing the conditions under which the power to issue process for the apprehension of alleged criminals may be exercised by justices of the peace (G. C. §§ 13494 and 13496): *Truesdell v. Combs*, 33 O. S. 186.

No person shall be placed on trial for a crime against the laws of this state upon the mere information of a public prosecutor, nor until he has been charged with the commission of such crime upon oath or affirmation: *Eichenlaub v. State*, 36 O. S. 140.

One charged with the commission of a misdemeanor was prosecuted by information, and the information being unsupported by oath or affirmation, the accused moved to quash it for that cause, which motion was overruled. It was held that in overruling such motion there was error: *Eichenlaub v. State*, 36 O. S. 140.

The act providing for proceedings against, and the commitment to a house of refuge of destitute and homeless minors, whose fathers are living, without notice to the fathers, is not in conflict with this section, as a full and complete remedy by habeas corpus is provided by the act for any infringement of parental rights: *House of Refuge v. Ryan*, 37 O. S. 197; see, also, *State, ex rel., v. Stiles*, 12 O. D. (N.P.) 338.

Sections 4364-42, 4364-43, 4364-44 and 4364-45, Revised Statutes, making it a crime to have in possession for use or sale certain bottles or other vessels without the written consent of the owner, and providing for search warrant to seize and restore such property to the owner, are invalid, being in conflict with Art. I, §§ 1, 14 and 19, of the constitution of Ohio: *State v. Schmuck*, 77 O. S. 438.

An ordinance under the power conferred by § 3670 to regulate and license chattel mortgage and salary loan brokers, requiring every person engaged in such business to file with the auditor of the city, weekly, a detailed record of every loan made during the week preceding, to remain there as a permanent record open to the inspection of the mayor and chief of police, is not violative of § 14 of the bill of rights, which provides, "The right of the people to be secure in their persons, houses, papers and possessions against unreasonable searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized," and is not unreasonable: *Sanning v. Cincinnati*, 81 O. S. 142.

That part of G. C. § 12561 which provides that "whoever buys, receives or unlawfully has in his possession any of the aforesaid articles (referring to journal brasses, nuts, bolts, etc., removed from railway cars, etc.), shall upon conviction thereof be imprisoned, * * *" is constitutionally invalid: *Kilbourne v. State*, 84 O. S. 247.

Cited as Art. I, § 4.

The power given by G. C. § 4594 by which a clerk of the police court, when an affidavit charging an offense is filed, may issue a warrant, does not contravene this section: *Molitor v. State*, 6 O. C. C. 264, 3 O. C. D. 445.

No person can be placed on trial for a crime against the laws of this state until he has been charged with the commission of such crime upon oath or affirmation. The mere information of a public prosecutor is insufficient: *Smith v. State*, 12 O. C. C. 458, 4 O. C. D. 35.

Proceedings for contempt of court are not controlled by Art. I, § 14, and no information supported by affidavit is necessary: *In re State v. Post*, 4 O. N. P. 157, 6 O. D. (N.P.) 200.

The language of § 4 of the amendments to the constitution of the United States being identical with that of § 14, Art. I, of the constitution of Ohio, although the former is a limitation only on the federal

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government, the reasonings of the United States courts concerning it are applicable to this section of the Ohio constitution: *Cleveland Electric Co. v. Hitchens*, 3 O. N. P. (N.S.) 57, 15 O. D. (N.P.) 522.

The police court of Cincinnati has no jurisdiction over an accused person, and no power or authority to try his cause or impose sentence upon him, except on a warrant issued upon oath or affirmation charging him with the commission of a crime: *Stief v. Cincinnati*, 19 O. D. (N.P.) 484, 6 O. L. R. 602.

2 Debates, 231, 330, 464, 806, 826, 857, 870.

No imprisonment for debt.

SECTION 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud. (*See Const. 1802, Art. VIII, § 15.*)

See Const. 1802, Art. VIII, § 15.

Cited by mistake for Art. I, § 19: *Freeman v. Hunter*, 7 O. C. C. 117, 3 O. C. D. 689 [affirmed, without report, *Hunter v. Freeman*, 51 O. S. 574].

This constitutional provision clearly contemplates legislation before any arrest could be made in civil actions though fraud may have intervened. Courts, therefore, whether of general or limited jurisdiction, have now no common law power to authorize arrests in such cases, and the power, if it exists at all, must have been conferred by express legislation: *Spice v. Steinruck*, 14 O. S. 213.

The provision in G. C. § 12123, directing the putative father to be committed to jail in default of giving security to perform the order of the court charging him with the maintenance of his illegitimate child, is not in conflict with this section. The sum in which the defendant is charged with the maintenance of the child is not a debt within the meaning of this provision of the constitution: *Musser v. Stewart*, 21 O. S. 353.

General Code § 13718, authorizing the arrest on execution of a party against whom a fine has been adjudged and his imprisonment until such fine be paid, or he be otherwise discharged according to law, is not unconstitutional: *In re Beall*, 26 O. S. 195.

This section has no application to imprisonment by a court as for a contempt, because of the refusal by the party so imprisoned to obey an order of the court to pay money to a receiver in proceedings in aid of execution: *White v. Gates*, 42 O. S. 109.

Money obligations arising upon contract, express or implied, and judgments rendered thereon, are debts within the purview of § 15, of the bill of rights, which forbids imprisonment for debt in civil actions: *Bank v. Becker*, 62 O. S. 289.

A final money decree for alimony is not a debt within the purview of the constitutional inhibition against imprisonment for debt, but is such an order as that, under favor of § 12137, punishment as for a contempt may follow a willful failure to comply with it: *State v. Cook*, 66 O. S. 566.

An order to pay alimony pendente lite is not within the clause of the constitution forbidding imprisonment for debt, except in case of fraud: *Kaderabek v. Kaderabek*, 3 O. C. C. 419, 2 O. C. D. 236.

A judgment debtor who has property which he himself has disclosed and which he refuses to deliver to the receiver may be imprisoned for contempt: *In re Concklin*, 5 O. C. C. 78, 3 O. C. D. 40.

2 Debates, 231, 330, 331, 464, 466, 806, 826, 857, 870.

Of redress in courts.

SECTION 16. All courts shall be open and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law. (As amended September 3, 1912.)

Vote: "Yes," 306,764; "No," 216,634.

Original § 16 read as follows: "Sec. 16. [Of redress in courts.] All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay. (See Const. 1802, Art. VIII, § 7.)"

See Const. 1802, Art. VIII, § 7.

- I. Applied, cited, construed, referred to, etc.
- II. Scope and origin.
- III. Courts shall be open.

- IV. Due course of law.
- V. Waiver of right to resort to courts.
- VI. Effect on specific statutes.

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Cincinnati v. Steinkamp, 9 O. C. C. 178, 6 O. C. D. 85 [affirmed, Cincinnati v. Steinkamp, 54 O. S. 284]; McAlpin v. Clark, 1 O. N. P. 195, 2 O. D. (N.P.) 160; cited by mistake, Lally v. Farr, 6 O. N. P. 73, 9 O. D. (N.P.) 119; Fogarty v. Cincinnati, 7 O. N. P. 100, 9 O. D. (N.P.) 753; Manufacturing Co. v. Polishers' Union, 8 O. N. P. 574, 11 O. D. (N.P.) 643; Appel v. Insurance Co., 4 O. N. P. (N.S.) 229, 16 O. D. (N.P.) 499; McCaslin v. Perrysburg, 6 O. N. P. (N.S.) 48, 18 O. D. (N.P.) 196; The Post Publishing Co. v. Butler, 137 Fed. 723, 71 C. C. A. 309, 14 O. F. D. 631, 3 O. L. R. 57.

Cited by mistake for Art. II, § 16: Newton v. Commissioners, 26 O. S. 618.

II. SCOPE AND ORIGIN.

This section is copied from the constitution of 1802: Tappan v. Tappan, 6 O. S. 64.

This provision, like other provisions of the written constitution, prevails in case of conflict between it and pre-existing practices of common law: Railway v. Keith, 67 O. S. 279.

III. COURTS SHALL BE OPEN.

That "all courts shall be open" is ordained by the constitution, and it is not within the power of the legislature to abridge the period within which an existing right may be so asserted, as that there shall not remain a reasonable time within which an action may be commenced: Lafferty v. Shinn, 38 O. S. 46.

The mere absence from the state of the justice of the peace who rendered the final judgment in an appealable case, can not defeat the right of appeal where the party desiring to appeal has, within the time allowed by law, executed an appeal bond with an acceptable surety and left said bond in the office of the trial justice of the peace and has otherwise done everything within his power to perfect his said appeal: Cross-Tie Company v. Railway, 10 O. N. P. (N.S.) 412, 20 O. D. (N.P.) 565.

IV. DUE COURSE OF LAW.

"Due course of law" implies and requires that the parties litigant shall each have a day in court: Railroad v. Sullivan, 32 O. S. 152.

General Code § 11343 as amended and supplemented (94 v. 295), changing the presumption and burden of proof as to malice, contravenes this section: Byers v. Printing Co., 84 O. S. 408.

The constitutionality of G. C. § 11343 was upheld by regarding it as giving an option to the party injured to stand upon his rights under the old law or to waive a part of his rights by demanding and accepting a retraction under G. C. § 11343: Post v. Butler, 137 Fed. 723, 71 C. C. A. 309, 14 O. F. D. 631, 3 O. L. R. 57.

General Code § 6308, which provides that actions for injury to person or property caused by the negligence of the owner of any automobile, may be brought by the party injured against such owner in the county where such injured party resides, and that summons may issue to the sheriff of any county within the state wherein the defendant resides, to be served as in other civil actions, is a constitutional and valid exercise of legislative power: Allen v. Smith, 84 O. S. 283.

Under this section a court can not decide hypothetical questions of law which are not directly involved in the judicial proceeding for the case pending before it: State v. Baughman, 38 O. S. 455.

"Due course of law" means that such course of law shall be enacted as will require that he whose property is about to be taken, shall have notice of the time and place of hearing, of what is sought to be appropriated and an opportunity to be heard in his own behalf. Any law which seeks to deprive him of his property without such proceeding, is in direct opposition to the letter and spirit of the constitution: Harrison v. Sabina, 1 O. C. C. 49, 1 O. C. D. 30.

The right of a turnpike company to take toll is a property right which can not be taken away without due process of law: Turnpike Co. v. Waechter, 2 O. C. C. (N.S.) 21, 15 O. C. D. 605.

Where imprisonment, as a part of a sentence upon conviction of assault, is imposed "until the fine and costs are paid," it is the duty of the court to add "or secured to be paid or he be otherwise legally discharged." Without these words the judgment would be equivalent to a life sentence and would be illegal: Ex parte Mullaney, 8 O. N. P. 49, 10 O. D. (N.P.) 419.

The general assembly may pass an act authorizing a county to pay a demand not legally enforceable, but for which it has received a valuable consideration and which in equity and good conscience it

ought to pay, although the supreme court without deciding the claim to be illegal, has enjoined the county from paying it: *State, ex rel., v. Gibson*, 2 O. N. P. (N.S.) 221, 15 O. D. (N.P.) 73 [affirmed, *State, ex rel., v. Gibson*, 4 O. C. C. (N.S.) 433, 16 O. C. D. 784 [affirmed, without report, *State, ex rel., v. Gibson*, 71 O. S. 509].

See, also, cases cited under VI, this section.

V. WAIVER OF RIGHT TO RESORT TO COURTS.

Courts are created by virtue of the constitution and inhere in our bodies politic as a necessary part of our system of government, and it is not competent for any one, by contract or otherwise, to deprive himself of their protection. The right to appeal to the courts for the redress of wrongs is one of those rights which is, in its nature, under our constitution inalienable, and can not be thrown off or bargained away: *Railroad v. Stankard*, 56 O. S. 224.

One of the rules in the relief department of a railroad company provided that all claims of beneficiaries should be submitted to the determination of the superintendent whose decision should be final and conclusive, unless appealed to the advisory committee, and in case of such appeal, the decision of the committee should be final and conclusive upon all parties without exception or appeal; it was held that after the rejection of a valid claim by the advisory committee, the beneficiary could maintain an action in the court for the recovery of the money due thereon, and that such rate is not a bar to the action: *Railroad v. Stankard*, 56 O. S. 224.

A contract whereby an express company stipulates for immunity from its wrongful negligence, is within the inhibition of the rules that parties can not by contract take away the jurisdiction of the courts: *Garrison v. Railway*, 15 O. D. (N.P.) 557, 3 O. L. R. 134, 1 *Hosea*, 358.

The rule which declares invalid contracts whereby an employer undertakes to exempt himself from liability to his employe, on account of negligence resulting in injury is not confined in Ohio to cases where railway companies are the employers, but extends to employers and employes generally: *Garrison v. Railway Company*, 15 O. D. (N.P.) 557, 3 O. L. R. 134, 1 *Hosea*, 358.

A railroad can not prevent employes from going into court by providing that all claims under the relief department shall be submitted to the superintendent and his decision be final: *Railroad v. Stankard*, 56 O. S. 224.

VI. EFFECT ON SPECIFIC STATUTES.

The act providing for proceedings against, and the commitment to, a house of refuge of destitute and homeless minors, whose fathers are living, without notice to the fathers, is not in conflict with this section, as a full and complete remedy by habeas corpus is provided by the act for any infringement of parental rights: *House of Refuge v. Ryan*, 37 O. S. 197.

A statute imposing a tax upon the business of trafficking in intoxicating liquors which provides for its collection, and imposes penalties for its nonpayment, and for the refusal of a person engaged in the business to make return, is not in conflict with this section nor with the fourteenth amendment to the constitution of the United States: *Adler v. Whitbeck*, 44 O. S. 539.

General Code §§ 8568 to 8570 and 12464, providing for filing instruments pertaining to conditional leases and sales of personal property, are not in conflict with the constitution: *Weil v. State*, 46 O. S. 450.

General Code § 11343, as amended and supplemented in 94 v. 295, changing the presumptions and burden of proof as to malice is unconstitutional by reason of this section: *Byers v. Printing Co.*, 84 O. S. 408.

General Code §§ 6209 and 6210 are not in conflict with the fourteenth amendment to the constitution of the United States, nor with § 16, of Art. I, of the constitution of this state. They neither deprive the owner of his property, nor of his remedy by due course of law: *Mullen v. Peck*, 49 O. S. 447.

Revised Statutes § 2316, which authorized municipal corporations to postpone, until after a proposed public improvement should have been completed a judicial inquiry into claims for damages filed on account thereof, by owners of abutting property, was not in conflict with Art. I, § 16, of the constitution of 1851: *Toledo v. Preston*, 50 O. S. 361.

A law, although not giving notice, states the time of meeting of a board, is valid, since all must take notice of the fact; and although no appeal is provided for from the board to a higher authority in cases of excessive valuation, injunction will lie: *State, ex rel., v. Jones*, 51 O. S. 492.

The legislature may provide for the protection of fish and to that end may declare nets set or used contrary to law a public nuisance and that they may be destroyed by wardens and other executive officers, and § 6968-2 of the Revised Statutes, as amended April 26, 1898 (93 O. L. 303),

(see G. C. § 1398, et seq.), is not in that respect unconstitutional on the ground that it deprives the citizen of his property without due process of law: *State v. French*, 71 O. S. 186; compare, *Edson v. Crangle*, 62 O. S. 49.

The statutes on the subject of cleaning and repair of ditches are valid (notice amendments in G. C. § 6691): *Taylor v. Crawford*, 72 O. S. 560.

An act entitled, "An act to prohibit the use of fictitious names in partnership" is valid (G. C. §§ 8099 to 8105): *Hartzell v. Warren*, 11 O. C. C. 269, 5 O. C. D. 183.

The act of April, 1904, for the relief of county treasurers and county commissioners, is not a legislative interference with the judgment of a court, and is valid: *State, ex rel., v. Gibson*, 4 O. C. C. (N.S.) 433, 16 O. C. D. 784 [affirmed, without report, *State, ex rel., v. Gibson*, 71 O. S. 509].

The Winn law (G. C. § 6193, et seq.) is constitutional, even as against the owners of a house of ill-fame: *State v. Allen*, 3 O. N. P. 201, 6 O. D. (N.P.) 43.

General Code § 2140, which provides for the transfer of a prisoner from the Ohio reformatory to the Ohio penitentiary is not a violation of this section: *In re Clayton*, 13 O. D. (N.P.) 546.

Sections 4914, 4916 and 4918, of the Revised Statutes, so far as they authorize the probate court to declare a turnpike road abandoned and vacated as a toll road, and thereby to become a free road, without the intervention of a jury, or the right of appeal whereby such jury could be had to determine whether the road or a part thereof has been out of repair for the preceding six months, within the statutory meaning, are in conflict with § 5, Art. I, of the constitution: "The right of trial by jury shall be inviolate;" § 16, Art. I, of the constitution: "Every person, for an injury done him in his lands and goods, shall have remedy by due course of law;" the provision of § 1, Art. XIV, of the amendments of the constitution of the United States, that no person shall be deprived of property without due process of law: *Turnpike Co. v. Parks*, 50 O. S. 568.

Section 6563a, Revised Statutes, providing: "If the plaintiff, in any action for wages, recover the sum claimed by him in his bill of particulars, there shall be included in his costs such fee as the court may allow, but not in excess of five dollars, for his attorney. But no such attorney fee shall be taxed in the costs unless said wages have been demanded in writing, and not paid within three days after such demand. If the defendant appeal from any such judgment, and the plaintiff on appeal recover a like sum, exclusive of interest, from the rendition of the judgment before the justice, there shall be included in his costs such additional fee, not in excess of fifteen dollars, for his attorney, as the court may allow," was held to be unconstitutional and void: *Coal Co. v. Rosser*, 53 O. S. 12.

The remedy by due course of law guaranteed by § 16, of the bill of rights, extends to all the adversary rights of persons in property, and requires that before there is a judicial determination affecting such right process to obtain jurisdiction of the person claiming it shall be issued and served, except that the legislature may provide for a substituted or constructive service to be made when actual service is impracticable. The act of April 27, 1896, entitled "An act to provide for the registration of land titles in Ohio," etc. (92 O. L. 220), is repugnant to this section of the constitution: *State, ex rel., v. Guilbert*, 56 O. S. 575.

Section 6968, Revised Statutes, as amended February 17, 1892 (89 O. L. 26), is in conflict with § 16, Art. I, of the constitution of this state, and is therefore void, for the reason that it confiscates property without due course of law: *Edson v. Crangle*, 62 O. S. 49; see, also, *State v. Owen*, 3 O. N. P. 181, 4 O. D. (N.P.) 163.

The act of April 4, 1902, entitled, "An act to prevent fraud in the purchase, disposition or sale of merchandise" (95 O. L. 96), is repugnant to the first article of the constitution, because it places an unwarrantable restriction upon the rights of the individual to acquire and possess property, and because it contains a forbidden discrimination in favor of a limited class of creditors: *Miller v. Crawford*, 70 O. S. 207; see, also, *Wright v. Crawford*, 13 O. D. (N.P.) 607.

General Code § 6451 is not invalid because it fails to provide for notice to the owners of lands crossed by the ditch: *Zimmerman v. Canfield*, 42 O. S. 463.

This section does not render invalid the statute which creates the State Liability Board of Awards, and confers powers thereon (G. C. § 1465-37, et seq., 102 v. 525): *State, ex rel., v. Creamer*, 85 O. S. 349.

This section does not render invalid the statute which authorizes the state board of health to compel municipal corporations to construct sewage systems (G. C. § 1249, et seq.): *Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113.

2 Debates, 337, 464, 806, 826, 857, 870.

Art.I, § 17. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Hereditary priv-
ileges, etc.

SECTION 17. No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state. (*See Const. 1802, Art. VIII, § 24.*)

See Const. 1802, Art. VIII, § 24.

2 Debates, 231, 335-337, 466, 467, 806, 826, 857, 870.

Suspension of
laws.

SECTION 18. No power of suspending laws shall ever be exercised, except by the general assembly. (*See Const. 1802, Art. VIII, § 9.*)

See Const. 1802, Art. VIII, § 9.

Cited: French v. Shirley, 7 O. N. P. 26, 9 O. D. (N.P.) 181.

The authority conferred upon commissioners of counties and trustees of townships to grant general and special permission for animals named to run at large, as conferred by § 2, of the act of April 13, 1865 (62 v. 185) (see G. C. § 5811, et seq.), was within the scope of legislative power, and does not conflict with this section: Fox v. Fox, 24 O. S. 335.

Provisions in local option statutes authorizing the residents of a district to determine for a limited period whether intoxicating liquors shall or shall not be sold in such district, and providing for another determination at the expiration of such period, do not violate this section: Lloyd v. Dollison, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, State v. Dollison, 68 O. S. 688; State v. Dollison, 194 U. S. 445, 14 O. F. D. 380].

2 Debates, 231, 337, 464, 468, 469, 806, 826, 857, 870.

Of the inviolabil-
ity of private
property.

SECTION 19. Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner. (*See Const. 1802, Art. VIII, § 4.*)

See Const. 1802, Art. VIII, § 4.

As to juries and the right thereto, see, also, Art. I, § 5; Art. I, § 10; and Art. XIII, § 5.

- I. Applied, cited, construed, referred to, etc.**
- II. Scope and effect.**
- III. Private property inviolate.**
- IV. Subservient to public welfare.**
- V. Taking private property for public use.**
 - A. What constitutes taking.
 - B. For what purposes property may be taken.
 - C. What may be taken.
 - D. When title passes.
 - E. Estoppel.
- VI. Compensation.**
 - A. Nature and amount.
 - B. In money.
 - C. When payable.
 - D. Jury.
 - 1. Under constitution of 1802.
 - 2. Under constitution of 1851.
- VII. No deduction for benefits.**
- VIII. Effect of constitutional provision on specific statutes.**

- A. Notice.
- B. Taxes and assessments.
- C. Corporation taxes.
- D. Tax sales.
- E. Public improvements.
- F. Quasi-public purposes.
- G. Railways.
- H. Entailed estates.
- I. Occupying claimants.
- J. Intoxicating liquor.
- K. Fish and game laws.
- L. Pure food laws.
- M. Billboards.
- N. Cemeteries.
- O. Animals.
- P. Dealers in second-hand articles.
- Q. Conditional sales.
- R. Replevin.
- S. Mob violence.
- T. Restriction upon contract.
- U. Liability of public officers.
- V. Rules of evidence.

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Giesy v. Railroad, 4 O. S. 308; Newton v. Commissioners, 26 O. S. 618; Frevert v. Finfrock, 31 O. S. 621; Chamberlain v. Cleveland, 34 O. S. 551; Peters v. McWilliams, 36 O. S. 155; State, ex rel., v. Frame, 39 O. S. 399; McCombs v. Stewart, 40 O. S. 647; State, ex rel., v.

Hamilton, 47 O. S. 52; State, ex rel., v. Toledo, 48 O. S. 112; McQuigg v. Cullins, 56 O. S. 649; Turnpike Co. v. Parks, 50 O. S. 568; Southern Gum Co. v. Laylin, 66 O. S. 578; Railway v. Waechter, 70 O. S. 113; Miller v. Crawford, 70 O. S. 207; Harrison v. Sabina, 1 O. C. C. 49, 1 O. C. D. 30; In re George, 5 O. C. C. 207, 3 O. C. D. 104; Carlisle v. Cincinnati, 8 O. C. C. (N.S.) 46, 19 O. C. D. 81; Furniture Co. v. Railway, 7 O. N. P. 639, 9 O. D. (N.P.) 674; Railroad v. Railway, 3 O. N. P. (N.S.) 109, 16 O. D. (N.P.) 777; Hume v. Traction Co., 13 O. D. (N.P.) 70; Miller v. Railway, 13 O. D. (N.P.) 418; Fitton v. State, 1 O. N. P. (N.S.) 133, 14 O. D. (N.P.) 156; Ritter v. Railway, 6 O. N. P. (N.S.) 161, 18 O. D. (N.P.) 846; Norwood v. Baker, 172 U. S. 269, 12 O. F. D. 228; Shooting Club v. Casperson, 193 U. S. 189, 14 O. F. D. 319; Traction Co. v. Hof, 174 U. S. 1; Venable v. Schafer, 7 O. C. C. (N.S.) 337, 18 O. C. D. 202.

Cited by mistake as Art. I, § 15: Freeman v. Hunter, 7 O. C. C. 117, 3 O. C. D. 689.

Cited in dissenting opinion: Cincinnati v. Ferguson, 12 O. D. (N.P.) 439.

II. SCOPE AND EFFECT.

This section is construed in connection with Art. XIII, § 5, of the constitution of 1802: Railroad v. Bolen, 76 O. S. 376.

Under the provisions of the constitution of 1802 that private property shall be held inviolate, but subservient to the public welfare, provided compensation in money be made the owner, it was held that compensation was not required to be first made, and that it might be taken for such use where provision for the assessment and payment is made, whether the owner was actually paid or not, it being sufficient if provision be made by law for compensating him; also, that benefits conferred might be set off against the value of the property so taken. No jury being required, it was the practice, authorized by statute, to have compensation determined by three commissioners who were sent out to view the premises. Manifest abuses having arisen under this method of appropriating private property, the constitution makers of 1851 made a radical change in the procedure by § 19, of the bill of rights, and § 5, of Art. XIII, by which it is provided (§ 19) respecting compensation that in time of war or other public exigency, imperatively requiring its immediate seizure, etc., a compensation shall be made the owner in money, and in all other cases a compensation for the property so taken shall first be made in money or secured by a deposit of money, and such compensation shall be assessed by a jury without deduction for benefits. And (§ 5) that no right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money, or first secured by a deposit of money, irrespective of any benefit, which compensation shall be ascertained by a jury of twelve men in a court of record. The implication clearly follows that the jury intended is a constitutional jury of twelve competent men, and their conduct to be directed by a court. "The word 'jury' means a tribunal of twelve men, presided over by a court, and hearing the allegations, evidence and arguments of the parties." Lamb v. Lane, 4 O. S. 167. "The word 'jury' in the section cited, as well as in the other places in which it occurs in the constitution, has uniformly been construed to mean a tribunal of twelve men, presided over by a court, and under its direction, hearing the allegations, evidence and arguments of the parties, and declaring the truth upon the evidence submitted, and the law given them by the court": Smith v. Railroad, 25 O. S. 91.

To give effect to these constitutional requirements, the general assembly, at its session of 1852 (50 O. L. 201), enacted a general appropriation act "to provide for compensation to owners of private property appropriated to the use of corporations," which is now, with various amendments, codified as G. C. Part III, Title III, Chapter 5, §§ 11038 to 11091: Railroad v. Bolen, 76 O. S. 376.

This provision prevails over the rules of common law and the rights given thereby: Railway v. Keith, 67 O. S. 279.

The constitution of 1851 restricted the exercise of the right of eminent domain as it was exercised under the constitution of 1802 and necessitated new legislation on the subject of appropriations: Railroad v. Tod, 72 O. S. 156.

Neither this section nor Art. XIII, § 5, confer the power of eminent domain, but they simply prescribe the method for the exercise of such power and the limitations thereof. The power itself passes under the general grant of legislative power in Art. II, § 1: Giesy v. Railway, 4 O. S. 308.

Where the legislature, in the constitutional exercise of the right of eminent domain, authorizes an act, the necessary consequence of which is to injure the property of another, and at the same time prescribes the particular mode in which the damages shall be ascertained

Art.I, § 19. CONSTITUTION OF THE STATE OF OHIO OF 1851.

and compensated, giving to the injured party the right to resort to the same, the person or corporation acting under such authority, and within the scope thereof, is not a wrongdoer, nor liable to an action for a tort, but must be proceeded against under the statute remedy: *Railway v. Whitacre*, 8 O. S. 590.

No valid appropriation of property for public use can be made without a law which provides compensation to the owner, to be assessed in the mode prescribed in the constitution. The constitution in this particular, does not execute itself: *McArthur v. Kelly*, 5 O. 140; *Foote v. Cincinnati*, 11 O. 408; *Lamb v. Lane*, 4 O. S. 167; *Shaver v. Starrett*, 4 O. S. 494; *Watson v. Trustees*, 21 O. S. 667.

The subject of roads is of so general a nature that it is placed alongside of "a time of war and other public exigencies," and it is provided that private property may be taken for roads without first making compensation therefor: *Hixson v. Burson*, 54 O. S. 470.

Private corporations are persons within scope of this section: *Railroad v. Gilmore*, 8 O. C. C. 658, 4 O. C. D. 366.

Section 19, Art. I, is a limitation upon § 6, Art. XIII, of the constitution: *Adkins v. Toledo*, 6 O. C. C. (N.S.) 433, 17 O. C. D. 417.

The constitution does not undertake to provide for the mode of procedure to appropriate private property to public use. This is provided by legislative enactment: *Garvin v. Columbus*, 5 O. N. P. 236, 5 O. D. (N.P.) 333.

If a municipal corporation is authorized by statute to change the grade of a street and no provision is made for compensation to the owners of abutting property, such property holders have action at law to recover compensation for injury to the property in a proper case: *Banking Co. v. Cleveland*, 1 O. N. P. (N.S.) 493, 14 O. D. (N.P.) 33.

The fifth amendment of the federal constitution is a restriction on federal power, and not on the power of the states; and where the supreme court of a state gives no affirmative expression of its views in that regard or respecting the provision of its own constitution as to the taking of private property for public uses on compensation made, no jurisdiction to review its holding is conferred upon the United States supreme court: *Shooting Club v. Casperson*, 193 U. S. 189, 14 O. F. D. 319, 2 O. L. R. 366.

III. PRIVATE PROPERTY INVIOLETE.

This section prevents the taking of private property for any use other than a public use without the consent of the owner: *Reeves v. Treasurer*, 8 O. S. 333.

It was said in *Shaver v. Starrett*, 4 O. S. 494, that private property could not be taken except for public use, even in the absence of any constitutional provision.

The inviolability of private property guaranteed by § 19, Art. I, of the constitution, protects property from indirect as well as direct and open amercement, except for public welfare: *Haunts v. Lanman*, 2 O. N. P. (N.S.) 405, 15 O. D. (N.P.) 64.

The definition of a "university" given in G. C. § 7905 can have no bearing on the question of the control of a school established by a private donor to carry out his purposes in regard to education, and endowed by his property and the property of others given for the same purpose. The denominating of such a school as a "university" does not deprive it of the protection of the constitution of the state and the guaranty that all private property shall ever be held inviolate, notwithstanding it has not yet attained to the full scope of a university: *State, ex rel., v. Toledo*, 5 O. C. C. (N.S.) 277, 16 O. C. D. 628.

The statute for the relief of occupying claimants, passed March 10, 1831 (29 v. 261), requiring the value of the permanent improvements of the bona fide occupant, under color of title, to be paid as a condition precedent to the entry and possession of the owner, although an encroachment on the rights of private property as settled by the common law, rests upon a strong equity in favor of a compensation for improvements, which have augmented the value of the land, and inured to the benefit of the owner: *McCoy v. Grandy*, 3 O. S. 463.

The option which this law gives to the owner of land, after a recovery in ejectment, either to take the land on paying for the improvements, or to take the amount of its value in money without the improvements, secures to the owner the property in the land, and at the same time protects the occupying claimant in his equitable claim to a compensation for his improvements: *McCoy v. Grandy*, 3 O. S. 463.

But the amendatory act of March 22, 1849 (47 v. 56), giving to the occupying claimant the option which the original act gave to the owner of the land, thus taking the property away from the owner after the solemn form of a recovery and judgment in ejectment, and transferring it to his unsuccessful adversary, who is ordered to be

ejected as an intruder on the land, was a palpable invasion of the right of private property: *McCoy v. Grandy*, 3 O. S. 463.

In case of a mortgage, a judgment lien, a levy under execution, assessment of a tax, or other incumbrance on land arising out of the owner's liabilities, it is not within the scope of the legislative power to take the fee in the land from the owner and transfer it absolutely to the person holding the claim, while the owner stands ready and insists on discharging the liability and saving his property: *McCoy v. Grandy*, 3 O. S. 463.

The competency of the legislative power to transfer the property of one person to another, without the consent of the former, is not shown by any analogy either to proceedings in partition or the bar of the statute of limitations. In the case of the former, although the right of partition is an incident to the estate of tenancy in common, and the division the result of necessity, yet the owner is not divested of his property without the opportunity of saving it by a purchase; and in the case of the latter, the bar of the statute rests upon a rule of evidence raising a presumption that a title has passed, and upon this ground the aid of the judicial power is denied to one who has slept too long on his rights: *McCoy v. Grandy*, 3 O. S. 463.

The occupying claimant law rests upon entirely different ground: and in securing to the occupant a compensation for his improvements, as a condition precedent to the restitution of the property to the owner, it goes to the utmost stretch of the legislative power touching the subject. And the amendatory act of 1849, providing for the transfer of the land to the occupying claimant without the consent of the owner, is in plain conflict with the nineteenth section of the first article of the constitution, which declares that "private property shall ever be held inviolate," etc., and is, therefore, by the unanimous opinion of the court, pronounced unconstitutional and void: *McCoy v. Grandy*, 3 O. S. 463.

IV. SUBSERVIENT TO PUBLIC WELFARE.

The power to appropriate property rests upon public necessity, and can only be exercised where such necessity exists. But this necessity relates rather to the nature of the property and the uses to which it is applied, than to the exigencies of the particular case; and it is no objection to the exercise of the power that lands, equally feasible, could be obtained by purchase: *Giesy v. Railroad*, 4 O. S. 308.

It may be exercised directly or indirectly by the general assembly without the intervention of the judiciary, except for determining the amount of compensation. But the courts possess full power to determine its proper limits, and to prevent abuses in its exercise: *Giesy v. Railroad*, 4 O. S. 308.

It may be used to appropriate lands for a public highway of any kind, and this whether the road is built and owned by the public or by a corporation as a public instrumentality, provided it is kept open for public use as a matter of right, or, according to the nature of the work, the corporation is made a common carrier of goods or of passengers: *Giesy v. Railroad*, 4 O. S. 308.

The owner of land regularly appropriated to the use of a railroad company, under proceedings instituted by the company under laws providing therefor, is barred of the common law remedy to sue for and recover the damages he may have sustained by the entry of the company and the construction of their road upon such land. In such case, the bar is equally effectual, although the owner may have refused to submit to such proceedings, or to receive the amount awarded to him and deposited for his use: *Hueston v. Railway*, 4 O. S. 685.

The question whether or not a ditch will conduce to the public health, convenience or welfare, so that it will be of public use, is a question of law; and the mere fact that larger and better crops may be raised on two farms sought to be drained does not authorize the establishment of the ditch: *McQuillen v. Hatton*, 42 O. S. 202.

The act of 1893 (90 O. L. 28), requiring township trustees on a petition of a majority of abutting owners to open or extend a street, without requiring a finding by the trustees, that the public interest requires such taking, is unconstitutional and void: *Kinney v. DeMar*, 8 O. C. C. 149, 4 O. C. D. 282.

The secretary of war's approval of the plans of a county bridge across a navigable stream does not confer upon the county commissioners the right to swing said bridge in front of the property of a private owner without first acquiring the right to do so: *Gawn v. Wilson*, 7 O. N. P. 33, 9 O. D. (N.P.) 683.

The interest of the public in public roads, consisting of a perpetual easement in the land covered by them, for all the actual uses and purposes of public travel, may, at the discretion of the general assembly, be transferred without any pecuniary equivalent, to a plank

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road company, such plank road still remaining a public highway, and subject to the same uses and purposes as before. In such case the company becomes the assignee of the public and lawfully possessed of the same interest the public had. Such change of the mode of supporting an existing highway can not be presumed injuriously to affect the rights of the proprietors of land over which it passes, and if such injury is claimed to have resulted, it must be proved: *Plank Road Co. v. Cane*, 2 O. S. 420.

General Code § 3673 must not be interpreted so as to authorize a municipal corporation to impose a license fee upon merchants who do not sell upon public streets but who only solicit orders at the residences of their customers, and negotiate future sales there; and if so interpreted, it would be invalid as in violation of the right of property: *Tea Co. v. Tippecanoe*, 85 O. S. 120.

V. TAKING PRIVATE PROPERTY FOR PUBLIC USE.

A. What constitutes taking. Authority to lay down the necessary structure for a street railway, in a common highway or street, and to run cars thereon for the carriage of passengers for hire, may be lawfully granted to a company incorporated for that purpose, when no private right of the adjoining lot owners is thereby impaired: *Railway v. Cumminsville*, 14 O. S. 523.

Injury to property by interfering with travel upon the street on which such property is located is actionable even though the obstruction is at some distance from the property thus injured: *Railway v. Naylor*, 2 O. S. 235.

In order to constitute a "taking" under the constitution it is not essential that there be a physical seizure or appropriation of the property. Any actual and material interference with private property right constitutes such a taking: *Commissioners v. Gates*, 83 O. S. 19; *Mansfield v. Balliett*, 65 O. S. 451.

If the grade of a street has not been established, and property which abuts thereon is improved, the municipal corporation is not liable for damages caused by the grading of street, if the grade finally established is a reasonable and proper one: *Crawford v. Delaware*, 7 O. S. 459; *Cincinnati v. Penny*, 21 O. S. 499.

If the improvements are constructed after the grade is established in reliance upon such grade a property owner may recover for damage caused by a subsequent change of grade: *Crawford v. Delaware*, 7 O. S. 459; *Railway v. Cumminsville*, 14 O. S. 523; *Cincinnati v. Penny*, 21 O. S. 499.

The plaintiffs own a lot abutting on a public street running north and south through the center of the village of Nottingham and crossing the said railroad at grade north and near their lot. This street intersects at right angles other streets, one a short street immediately north and another a few hundred feet south of the lot, and two of these streets are the means of access to the village from different sections of a thickly settled community, so that the plaintiffs' premises are in the business portion of the village. They had improved their buildings with reference to the long established grade of the street, for both residence and business purposes, and were conducting a trading business therein. The railway company and the village, by appropriate agreement and for the purpose of eliminating the grade crossing, caused the construction of a subway under the railway right of way, by using for such subway a narrow portion of the east side of the forty-foot street on which the lot abuts, on which portion a concrete wall surmounted by an iron fence was erected so that there is no access by vehicles, to the subway, without going to the south end of the same, a distance of more than two hundred and fifty feet. This subway is about fourteen feet below the surface of the ground in front of the lot. As a part of the proceedings for the subway, the council of the village vacated that portion of the entire street which crossed the right of way of the railway company and closed it up, which cut off all access by vehicles to plaintiffs' premises from the north, northeast and northwest, unless they pass south through the subway and then turn north on the unvacated part of said street.

The evidence tends to show that the closing of the street at the crossing, and the making of the subway diverted travel from the unvacated part of the street into the subway and away from plaintiffs' place of business, causing the business theretofore done to locate in another part of the village, thus greatly reducing the value of plaintiffs' premises. It was held that on establishing the foregoing facts, the owners of the premises are entitled to recover from the village and railway company damages caused by their depreciation in value: *Schimmelmann v. Railway*, 83 O. S. 356 [approving *Cohen v. Cleveland*, 43 O. S. 190, and distinguishing *Kinnear v. Beatty*, 65 O. S. 264].

Where the only damages complained of by a property owner are remote, and not different in kind and hardly more appreciable in degree than are suffered by the general public, and there is no direct or special invasion of property rights, it can not be said that there is a taking of the property within the meaning of the constitution.

Injunction will not lie to restrain the laying of a spur railway track in a public street, under the circumstances presented in this case: *Herzog v. Railway*, 6 O. C. C. (N.S.) 527, 15 O. C. D. 702 [affirmed, without report, *Railway v. Herzog*, 74 O. S. 440].

On the application of a property owner who has other adequate access to his property an injunction will not be granted to restrain the closing of a street or alley: *Manufacturing Co. v. Beatty*, 65 O. S. 264.

Where the property taken is the merest legal figment and without real substance, the owner is not entitled to an injunction because of § 19, Art. I, as a matter of right, when the general equities of the case do not commend it to the chancellor's conscience: *Railway v. Transportation Co.*, 1 O. C. C. (N.S.) 117, 15 O. C. D. 146.

The construction of a railway in a public street in such a way as to interfere with the use of the street as a means of access to private property, will be enjoined unless compensation is made therefor, since such use is the taking within the meaning of this constitutional provision: *Burial Case Co. v. Railway*, 4 O. C. C. (N.S.) 365, 14 O. C. D. 107.

The putting of a street to a new and inconsistent use is not necessarily a taking of private property within the meaning of the constitution. The new use must be such a use as palpably and injuriously affects the adjacent property, and to plead or prove merely the invasion of a private right does not stir the conscience of a court of equity.

The use of a street for telephone purposes, being a permanent occupancy of a part of a highway by a private corporation for private gain, and to that extent an exclusion of the public, is an additional servitude for which an abutting owner is entitled to compensation: *Burns v. Telephone Co.*, 10 O. C. C. (N.S.) 307, 20 O. C. D. 74.

Mere silence on the part of the landowner as to the laying of an interurban railway track in the highway passing through his land, is not consent to the subsequent laying of a switch in said highway. An additional burden is imposed upon the landowner by the laying of such a switch, and where this is done without compensation being made therefor, or consent first obtained, a constitutional right of the landowner is violated and an injunction will lie upon his petition: *Chambers v. Traction Co.*, 5 O. C. C. (N.S.) 298, 17 O. C. D. 193 [affirmed, without report, *Traction Co. v. Chambers*, 73 O. S. 348].

When a city has been enlarged so as to include a tollgate on a turnpike, such company can not be compelled to surrender this part of its pike without compensations therefor being first made in money: *Gates v. Turnpike Co.*, 4 O. N. P. 235, 6 O. D. (N.P.) 337.

If the owner to whom compensation is to be paid, uses the property within the boundary lines of a proposed street after the passage of the ordinance, to appropriate for such purpose, he does so at his own risk and can not recover for any improvements or erections placed thereon after the passage of such ordinance: *Toledo v. Bayer*, 7 O. N. P. 324, 5 O. D. (N.P.) 87.

If the construction of a railroad in a city will work a material injury to abutting property, the owner has a property right in such street and is entitled to compensation: *Root v. Pennsylvania Co.*, 7 O. N. P. 337, 5 O. D. (N.P.) 315.

A telephone company has no right in Ohio to place its poles in the sidewalk or the curb line of a street without first obtaining the consent of the abutting property owner, or payment to him of the amount of damages which will be caused to his property by the erection of such poles: *Tannian v. Telegraph Association*, 1 O. N. P. (N.S.) 81, 13 O. D. (N.P.) 730.

The principle announced in *Callen v. Electric Light Company*, 66 O. S. 166, that "the placing by a private lighting company of poles in the curb of the street, and the stringing thereon of electric cables and wires for the purpose of furnishing light and energy to private takers, is a diversion of the street from the purpose to which it was dedicated, and a taking of the property of the abutting owner within the meaning of § 19 of the bill of rights," applies with equal force to the laying of a pipe longitudinally with and under the sidewalk for the conveyance of natural gas to private consumers; and notwithstanding the laying of such pipe is under and by virtue of a city ordinance, the company can not enjoin interference therewith by an abutting property owner, if the putting in of the pipe will injure him to an appreciable extent: *Gas and Fuel Co. v. Townsend*, 1 O. N. P. (N.S.) 289, 14 O. D. (N.P.) 5.

The construction and maintenance of a telegraph or telephone line upon a highway is a new and additional burden upon the fee to which when the highway was established, it was not contemplated it would be subjected, and for which the owner is entitled to additional compensation: *Denver v. Telephone Co.*, 8 O. N. P. 666, 10 O. D. (N.P.) 273; see, also, *Callen v. Electric Light Co.*, 66 O. S. 166.

A street railway company can not appropriate the right to use water pipes in a municipality, for a part of its return circuit: *Dayton v. Railway*, 12 O. D. (N.P.) 258.

Gas pipes in the street impose an additional burden upon the easement of an abutting owner for which he is entitled to compensation: *Gas & Fuel Co. v. Townsend*, 1 O. N. P. (N.S.) 289, 14 O. D. (N.P.) 5.

In 1901 the Frisbie Company, being the owner of a tract of land in East Cleveland, divided it into streets and lots, and filed a plat of the allotment with the county recorder. The company adopted a general scheme or plan for the improvement of the allotment, and placed the lots upon the market for sale, and all the lots were sold, and each deed from the company to the various purchasers, except for certain lots on one of the streets which lots were left unrestricted for business buildings contained the following restriction: "As part of the consideration for this deed, it is hereby agreed that the said land shall be used exclusively for residence purposes." The defendant company has now purchased from the various owners several of the lots in this allotment for its right of way, and is about to use them for the construction and operation of a railroad thereon. Each lot owner has an equitable easement which is private property and before the property can be used for other than residence purposes, the defendant must make compensation to the other lot owners: *Kuebler v. Railway*, 10 O. N. P. (N.S.) 385, 20 O. D. (N.P.) 525.

When the level of the waters in a state canal, its reservoirs and feeders, have been raised, thereby causing an abutting owner's land to be overflowed by water, this constitutes a taking of plaintiff's property within the meaning of this section of the constitution: *Ley v. Kirtley*, 5 O. N. P. (N.S.) 529, 18 O. D. (N.P.) 280.

To deprive a riparian owner of the right to maintain a milldam is a taking of private property: *Kiser v. Commissioners*, 85 O. S. 129.

Whether the injury to access to two adjacent lots caused by extending the track across the street between the lot lines produced of the defendant company, is a taking under this section of the constitution was questioned, but not decided, in *Railway v. Railway*, 3 O. N. P. (N.S.) 109, 16 O. D. (N.P.) 777.

General Code § 6773 which authorizes the taking of private property in the improvement of a stream and the removal of an obstruction therefrom without compensation therefor to the owner is unconstitutional: *Kiser v. Commissioners*, 85 O. S. 129.

General Code §§ 1465-37, et seq., which create a state liability board of awards, and provide for an insurance fund to which employers and employes may contribute at their option is not a taking of property without due process of law: *State, ex rel., v. Creamer*, 86 O. S. 349.

B. For what purposes property may be taken. The power of the state to take the property of its citizens by a tax is not broader than the purposes for which the state is formed and so is not wholly within the discretion of the legislature, but is subject to the limitation that it must be for a public purpose: *Commissioners v. State, ex rel.*, 75 O. S. 114.

Property may be appropriated for any purpose which is public in its character. Examples of such cases are public streets, *Hickox v. Cleveland*, 8 O. 543; *Symonds v. Cincinnati*, 14 O. 147; *Browne v. Cincinnati*, 14 O. 541; township roads, *Ferris v. Bramble*, 5 O. S. 109; *Shaver v. Starrett*, 4 O. S. 494; turnpikes, *Kemper v. Turnpike Co.*, 11 O. 392; railroads, *Moorhead v. Railway*, 17 O. 340; toll bridges, *Young v. Buckingham*, 5 O. 485; the construction of a canal, *Cooper v. Williams*, 4 O. 253; *Willyard v. Hamilton*, 7 O. (pt. 2) 111; the repair of a canal, *Bates v. Cooper*, 5 O. 115; the use of water for a canal, *Buckingham v. Smith*, 10 O. 288; a public wharf, *Railway v. Ironton*, 19 O. S. 299; and ditches and drains, *Sessions v. Crunkilton*, 20 O. S. 349; *Reeves v. Treasurer*, 8 O. S. 333.

The draining of wet lands, which not only retard cultivation but are a source of malaria, is a sufficient public purpose to justify their drainage under eminent domain: *Thomas v. Commissioners*, 5 O. N. P. 449, 5 O. D. (N.P.) 503.

The facts being ascertained, the question whether or not a ditch will conduce to the public health, convenience or welfare within the meaning of G. C. § 6604, so that it will be of public use, is a question of law; and the mere fact that larger and better crops may be raised on two farms sought to be drained, does not authorize the establishment of the ditch: *McQuillen v. Hatton*, 42 O. S. 202.

Canal commissioners can not appropriate water in order to create

hydraulic power to sell or lease for the benefit of the state: *Buckingham v. Smith*, 10 O. 288.

C. What may be taken. Only such interest as will answer the public wants, can be taken; and it can be held only so long as it is used by the public, and can not be diverted to any other purpose: *Giesy v. Railroad*, 4 O. S. 308.

The legislature may authorize the occupation of an easement, originally acquired by grant or appropriation, in any manner calculated to further the general objects of the acquisition; but may not divert it to purposes which exclude the original uses, or lay additional burdens upon the land, or destroy, or impair the incidental easements of adjoining lot owners in the street or highway.

This interest of adjoining lot owners is properly protected by the constitution, and subject to be taken or appropriated only upon the condition that compensation is made: *Railway v. Cumminsville*, 14 O. S. 523; see, also, *Hatch v. Railway*, 18 O. S. 92.

The owners of unimproved lots can not recover damages from a municipal corporation for filling, ditching, or cutting down streets, being presumed to purchase with a view to a reasonable improvement of the streets: *Crawford v. Delaware*, 7 O. S. 459.

A claimant for damages in the alteration of a road, is not entitled to recover where such alteration merely renders the road less convenient for travel, without directly impairing his access to the road from the improvements on his land: *Jackson v. Jackson*, 16 O. S. 163.

When a road is surveyed and straightened it must be straightened in such a form as not to interfere with private property: *Beckwith v. Beckwith*, 22 O. S. 180.

A person whose land is taken by municipal authority to make or widen streets is entitled to compensation, in money, for the value of the land appropriated to such public use, to be ascertained by a jury: *Youngstown v. Moore*, 30 O. S. 133.

A private eleemosynary corporation's property charged with the maintenance of a public charity is still private property, and the transfer of absolute control and the property to another college is void: *State, ex rel., v. Neff*, 52 O. S. 375.

Riparian rights are property within the purview of § 19, of the bill of rights, of which the owner can not be deprived without just compensation, though taken for, or subject to a public use: *Mansfield v. Balliett*, 65 O. S. 451.

An easement of access from the street to an abutting lot is property: *Schimmelmänn v. Railway*, 83 O. S. 356; *McNulta v. Ralston*, 5 O. C. C. 330, 3 O. C. D. 163.

The fact that an institution, founded by private donation, receives money derived from a levy made by the board of education, does not take the school out of the class known as private schools nor is the levy of taxes as an aid in the support of such a school unconstitutional: *State, ex rel., v. Toledo*, 3 O. C. C. (N.S.) 468, 13 O. C. D. 327.

The right of the owner of land to lateral support is not a mere easement, but is a property right; and if the effect of a statutory provision is to abrogate the common law rule with reference to existing rights, such provision is unconstitutional and void, as being in contravention of Art. I, § 19, and Art. II, § 8, of the constitution: *Belden v. Franklin*, 8 O. C. C. (N.S.) 159, 18 O. C. D. 373.

An abutting property owner has a right and interest in a public street, in the nature of an easement, appurtenant to his lot, which is as much his private property as the lot itself. And when the city grants to a steam railroad company the right of way for its tracks in such street the abutting landowner has a right to have compensation and damages assessed and determined by a jury in condemnation proceedings: *Bending Co. v. Railway*, 2 O. N. P. 317, 3 O. D. (N.P.) 430.

Riparian owners have the right of access to and from navigable rivers and can not be deprived thereof without due compensation: *Gawn v. Wilson*, 7 O. N. P. 33, 9 O. D. (N.P.) 683.

The right of a riparian owner to construct and maintain a milldam is a property right of which he can not be deprived without compensation and G. C. § 6773 is therefore unconstitutional: *Kiser v. Commissioners*, 85 O. S. 129.

Where, under the charter of a turnpike, damages are assessed for injuries done to the land over which the road passes, the owner of the land can not afterwards sue one employed to make the road, for cutting the timber within the lines of the road into cordwood and selling it: *Prather v. Ellison*, 10 O. 396.

D. When title passes. Where lands are appropriated, the title does not pass until "a compensation therefor shall first be made in money, or first secured by a deposit of money": *Bothe v. Railway*, 37 O. S. 147.

In proceedings by a corporation, to appropriate private property, there must be a judgment confirming the verdict of the jury before

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the corporation is entitled, by a deposit of the amount of such verdict, to possession of the property appropriated: *Wagner v. Railway*, 38 O. S. 32.

E. Estoppel. While estoppel in its strict sense should be regarded as applying to questions of fact rather than law, it has been held that facts which would estop the property owner from attacking the validity of an assessment on other grounds would estop him from attacking it on the ground that the law under which the assessment was levied is unconstitutional: *Wright v. Thomas*, 26 O. S. 346; *State, ex rel., v. Mitchell*, 31 O. S. 592; *Tone v. Columbus*, 39 O. S. 281; *Lewis v. Symmes*, 61 O. S. 471; *Mt. Vernon v. State, ex rel.*, 71 O. S. 428; *Thornton v. Cincinnati*, 16 O. C. D. 33; *Shepard v. Barron*, 194 U. S. 553, 14 O. F. D. 417, 3 O. L. R. 327.

A party may waive his constitutional right to have assessments limited to the actual benefits conferred; and he may bind himself by signing a petition to that effect to pay the assessment, irrespective of the number of property owners who sign the petition and independent of the amount of benefits conferred: *Thornton v. Cincinnati*, 16 O. C. D. 33.

The fact that a property owner has signed an improvement petition does not estop him from claiming that the assessment is in excess of the benefits conferred, unless it appears from the terms of the petition that he agreed to pay his proportionate share thereof, irrespective of the amount of benefits: *Birdseye v. Clyde*, 61 O. S. 27.

A property owner who petitions for an improvement and who acquiesces in what is done under his petition or in the construction of the improvement, may estop himself as to what has already taken place, or as to the natural acquiescence of the acts which have already occurred, but he is not estopped to attack an assessment for violations of the law which occur thereafter, and which do not necessarily follow the granting of the petition: *Birdseye v. Clyde*, 61 O. S. 27.

A property owner who signs a petition for an improvement is estopped from attacking the constitutionality of the law under which such improvement and the assessment therefor are had, even though when such petition was signed laws of that sort had been adjudged by the supreme court to be valid and subsequently by a change of judicial opinion such laws were adjudged to be invalid: *Murphy v. Sims*, 7 O. C. C. (N.S.) 193, 17 O. C. D. 825 [affirming *Murphy v. Sims*, 15 O. D. (N.P.) 295, and affirmed, without report, *Sims v. Murphy*, 76 O. S. 626].

A property owner who petitioned for an improvement, took an active part in causing such improvement to be constructed, knew of what was being done toward the construction of such improvement and acquiesced therein, who signed a paper wherein for value he withdrew all objections to the improvement and the assessment of his real property, and who signed a statement that the work had been done properly and that there was no defense to the bonds, which statement was signed in order to enable the municipal corporation to issue its bonds, is estopped from denying the validity of such assessments: *Shepard v. Barron*, 194 U. S. 553, 14 O. F. D. 417, 3 O. L. R. 327.

One who has petitioned for an improvement and has otherwise taken steps in promoting it, is estopped to deny the power of the municipal corporation and to act in the manner called for by such petition: *Tone v. Columbus*, 39 O. S. 281.

A property owner who made no objection at the time of the apportionment by the engineer, under a former statute, had acquiesced therein, is bound thereby and can not attack its validity: *Bloch v. Godfrey*, 5 O. C. C. (N.S.) 318, 16 O. C. D. 781.

The mere fact that an abutting property owner petitioned for a sewer improvement and stood by without objection or protest and saw it built, does not estop him from thereafter contesting the validity of the assessment against his property to pay the costs thereof, on the ground that his property is not specially benefited thereby: *Hildebrand v. Toledo*, 6 O. C. C. (N.S.) 450, 17 O. C. D. 427.

Signing an improvement petition does not estop the property owner who so signs it from claiming the benefit of a subsequent construction given by the supreme court of the assessment statute in favor of the property owner: *Locke v. Cincinnati*, 7 O. N. P. 318, 2 O. D. (N.P.) 549.

Active participation in causing the improvement to be made will estop the party engaged therein from denying the validity of the assessment, but to create an estoppel from silence merely, it must be shown that the owner had knowledge: 1, that the improvement was being made; 2, that it was intended to assess the cost thereof, or some part of it, upon his property; 3, that the infirmity or defect in the proceedings existed which he is to be estopped from asserting; and 4, it must appear that some special benefit accrued to his property from such improvement which it is inequitable, under the circumstances, he should enjoy without compensation: *Tone v. Columbus*, 39 O. S. 281.

Under the act of April 5, 1866, where landowners, whose lands lying within two miles of the improvement have been reported as benefited, and assessed to pay the expense of the same, suffer the proceeding and work to go on, with knowledge of the facts, until the improvement was substantially finished, they are estopped in equity from enjoining the collection of the assessments so made to pay for the completed improvement: *Quinlan v. Myers*, 29 O. S. 500.

The owner is not estopped by having acquiesced in the construction of the improvement, nor by petitioning therefor and thereby consenting to the raising of a certain proportion of its cost by assessment on all abutting property. By such acts he binds his property for the payment of its proper share of a legal assessment for the cost of the improvement, but no further: *Birdseye v. Clyde*, 61 O. S. 27.

In some cases the mere silence of the property owner has been held not to estop him from attacking the validity of the assessment, if he has been under no special obligation to object, and he has done nothing to mislead the municipal corporation except by his silence: *Wright v. Thomas*, 26 O. S. 346; *Columbus v. Agler*, 44 O. S. 485; *Lewis v. Symmes*, 61 O. S. 471; *Andrews v. Settles*, 16 O. C. C. 638, 9 O. C. D. 191.

Whether payments of some installments of an assessment estops the property owner from attacking the validity of the remainder of such installments is a question upon which there is some conflict of authority: *Metcalf v. Carter*, 19 O. C. C. 196, 10 O. C. D. 269; *Yost v. Railway*, 2 O. C. C. (N.S.) 519, 14 O. C. D. 169.

When an assessment for a street improvement, whether payable in installments or not, is larger than allowed by law, and sufficient has been paid, though voluntarily, to equal or exceed the amount which could be lawfully assessed, the collection of the remainder of such assessment may be enjoined. In such case the action is not to recover payments already made, but to prevent the collection of unpaid illegal installments: *Cincinnati v. James*, 55 O. S. 180.

Estoppel does not apply, especially if the property owner has protested that the work was not done in due performance of the contract: *Hartzell v. Alliance*, 39 Bull. 232 (supreme court, no opinion).

While it has been held that an abutting property owner whose property has been assessed for a street improvement in excess of the amount authorized by law, who voluntarily pays the first installment before the contract for said improvement is let, who continues to pay all installments as they fall due while he watches in silence the letting of the contract and completion of the work, and who accepts all the benefits flowing therefrom is estopped from enjoining the collection of the excess installments: *Monroe v. Cleveland*, 9 O. C. C. (N.S.) 523, 19 O. C. D. 633 [reversed, without report, *Monroe v. Cleveland*, 78 O. S. 441]. (The fact that the supreme court reversed the circuit court shows that apparently the property owner was not estopped in this case.)

If the compensation is made to a property owner for the use of that part of his land which was taken for an improvement, the fact that he accepts such compensation does not estop him from claiming that the statute under which the assessment has been levied is unconstitutional: *Lewis v. Taylor*, 18 O. C. C. 443, 10 O. C. D. 205.

Acts which operate as an estoppel against a grantor will operate as an estoppel against the grantee: *Columbus v. Slyh*, 44 O. S. 484.

The fact that the grantee buys without actual knowledge of the assessment, or of the facts which amount to an estoppel, does not prevent him from being bound by an estoppel which would have been operative against his grantor: *Danks v. Phares*, 6 Dec. Rep. 1023, 9 Am. L. Rec. 554.

Estoppel against a property owner does not operate as an estoppel against his mortgagee: *Donohue v. Brotherton*, 7 O. N. P. 367, 10 O. D. (N.P.) 47.

The acts of an agent in excess of his authority do not amount to an estoppel of his principle: *Andrew v. Auditor*, 5 O. N. P. 123, 5 O. D. (N.P.) 242.

A grantee, who as part of the consideration assumes and agrees to pay specific assessments described in such deed, is estopped to deny their validity, and if he agrees to pay a certain amount thereon he is estopped to deny that such amount is due: *Lewis v. Taylor*, 18 O. C. C. 443, 10 O. C. D. 205 [affirmed, on other grounds, *Lewis v. Symmes*, 61 O. S. 471]; *Waldschmidt v. Bowland*, 6 O. C. C. (N.S.) 99, 17 O. C. D. 782 [affirmed, *Bowland v. Waldschmidt*, 73 O. S. 350]; *Herman v. Columbus*, 3 O. N. P. (N.S.) 216, 15 O. D. (N.P.) 509; *Caldwell v. Columbus*, 37 Bull. 270.

If a grantee merely assumes and agrees to pay the assessments on the property and the assessments are not specifically described, nor is the amount thereof fixed, the grantee is bound merely to pay the valid assessments and estoppel does not arise: *Walsh v. Sims*, 65 O. S. 211; *Bell v. Norwood*, 8 O. C. C. (N.S.) 435, 18 O. C. D. 809.

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Under an ordinance granting a street railway franchise containing a provision that if on said street a pavement has already been laid and an assessment therefor placed on the tax duplicate, that said company shall pay to the municipal corporation such proportion of the assessment for said improvement as the space occupied by its tracks and one foot on the outside of the outer rails thereof bears to the entire width of the improved roadway, it has been held that the railway company is bound by its contract to pay said proportion of the assessments made and levied upon the feet front of the abutting property, and can not defend upon any of the grounds that would have been available to abutting lot owners or to the company if not bound by such contract obligations: *Railway v. Columbus*, 3 O. N. P. (N.S.) 438, 16 O. D. (N.P.) 102.

If a property owner has undertaken to dedicate a street, his grantee is estopped from attacking an assessment for the improvement of such street on the ground that the municipal corporation had not acquired title thereto: *Neff v. Bates*, 25 O. S. 169.

Where a corporation invokes the aid of the courts to acquire private property by condemnation proceedings and to avail itself of the special provisions of G. C. §§ 11038 to 11091, it is held such company is estopped to question the validity of the parts of the law which imposes burdens upon it: *Wiler v. Gas & Fuel Co.*, 6 O. C. C. (N.S.) 206, 17 O. C. D. 257 [reversing *Gas Co. v. Wiler*, 1 O. N. P. (N.S.) 277, 14 O. D. (N.P.) 164, and affirmed, without report, in *Gas Co. v. Wiler*, 72 O. S. 628].

VI. COMPENSATION.

A. Nature and amount. Compensation paid to a landowner for lands taken by appropriation proceedings to open a street, can not be assessed back upon the lands of the owner remaining after such taking. Neither can the costs and expenses incurred in such proceedings be so assessed: *Railway v. Cincinnati*, 62 O. S. 465 [overruling *Cleveland v. Wick*, 18 O. S. 303].

The limitation of § 19, of Art. I, of the constitution, on § 6, of Art. XIII, as to assessments, goes to the full extent of prohibiting the raising of money directly or indirectly by assessment to pay compensation, damages or costs for lands appropriated by the public for public use: *Dayton v. Bauman*, 66 O. S. 379 [affirming and following *Railway v. Cincinnati*, 62 O. S. 465].

The limitation of § 19, of Art. I, of the constitution, on § 6, of Art. XIII, as to assessments, does not affect or prohibit the raising of money by assessment to pay for surface improvement of streets, sewers, etc., so long as the assessment does not exceed the special benefits conferred: *Dayton v. Bauman*, 66 O. S. 379 [affirming and following *Walsh v. Barron*, 61 O. S. 15].

Where the right to compensation for land appropriated for sidewalk purposes has once vested, but payment therefor is long delayed, the claim therefor will be treated as personal in the original owner, and not as having passed with the lots, subsequently conveyed after the building of the sidewalk by deeds in which no reference was made to such claim: *Hyde Park v. Dyer*, 7 O. N. P. (N.S.) 244.

The interest of an abutting property owner in a street can not be taken away without compensation: *Trust Co. v. Cleveland*, 1 O. N. P. (N.S.) 493, 14 O. D. (N.P.) 33; *Callen v. Light Co.*, 66 O. S. 166; *Schimmelmann v. Railway*, 83 O. S. 356.

In condemnation proceedings brought by a traction company seeking to appropriate a right of way through a farm, the owner must be paid for the land taken at its fair market value at the time it is taken, and testimony tending to show probable benefit to the farm or as to the price at which the farm may have been offered for sale is incompetent: *Traction Co. v. Dempsey*, 9 O. N. P. (N.S.) 65.

The measure of compensation in case of a taking by eminent domain is the full and fair market value of the property, not what it would bring at a forced sale, but what it would fairly bring if the owners themselves offered it for sale: *United States v. In-Lots*, Fed. Cases, 15441a, 4 O. F. D. 268.

In a proceeding to appropriate private property for street purpose, the value of the property is to be taken at the time of the trial, and not at the date of the condemnation ordinance: *Stribley v. Cincinnati*, 9 O. C. C. 122, 6 O. C. D. 54.

B. In money. In case of the assessment of damages for laying out a road over the lands of any person, the damages or compensation for the land necessary to be taken must be paid or tendered in money or secured to be paid to the acceptance of the owner, before the opening of the road can be ordered: *Ferris v. Bramble*, 5 O. S. 109.

General Code §§ 6461 to 6467 and 2460 taken together provide for the payment of money as compensation for taking private lands for ditch purposes, within the meaning of the constitution: *Zimmerman v. Canfield*, 42 O. S. 463.

An assessment of damages in the "sum of one hundred and fifty dollars, with a wagon way and stop for cattle," as the damages sustained by the owner of land taken for the construction of a railroad, is not in conformity with this provision: *Railroad v. Holler*, 7 O. S. 220.

It is error for court to order the proceedings before the commissioners for hearing upon any claim for compensation and damages, and leave the county commissioners at liberty to construct a ditch across private land, regardless whether the owner's compensation is first provided for, as required by the bill of rights: *Zimmerman v. Canfield*, 42 O. S. 463.

A fair market value of the property at the time it is taken must be awarded to the owner without any deduction for benefits conferred by the proposed improvement (see Art. VII, this section): *Giesy v. Railway*, 4 O. S. 309.

C. When payable. This section does not require compensation to be paid to the owner in advance on account of a public road which is open to the public without charge: *Fogarty v. Cincinnati*, 7 O. N. P. 100, 9 O. D. (N.P.) 753.

Compensation need not to be made in advance when a toll road is taken by a city and made a free road, when the city has extended its boundaries so as to include a tollgate: *Turnpike Co. v. Traction Co.*, 15 O. D. (N.P.) 118, 1 *Hosea*, 274 [reversed, without report, *Turnpike Co. v. Traction Co.*, 71 O. S. 530].

In cases falling within the protection of Art. I, § 19, of the constitution, which do not require as a condition precedent the payment or securement of compensation for property sought to be taken by the public, equity can afford adequate relief by requiring the defendant to give bond and it will not grant an injunction: *Turnpike Co. v. Commissioners*, 5 O. N. P. 423, 7 O. D. (N.P.) 509.

A railroad company can not under permission granted by the city council take possession of, for the use of its road, additional portions of a street without first having obtained the consent of the abutting property owners, or having compensated them: *Root v. Railroad*, 7 O. N. P. 337, 5 O. D. (N.P.) 315.

It was said that in case of changing the grade of a public street the property owner must be compensated before the work of changing the grade was begun: *Ryan v. Cincinnati*, 1 O. C. C. 558, 1 O. C. D. 311 [affirmed, without report, *Cincinnati v. Ryan*, 24 Bull. 371].

The construction of public roads is a purpose, which under this section is placed alongside of war, as a case in which it is not necessary to make compensation in advance: *Hixson v. Burson*, 54 O. S. 470.

D. Jury.

1. Under constitution of 1802. Under the constitution of 1802 it was not necessary that the amount of compensation to be paid for property taken by eminent domain, be determined by a jury; and statutes which provided that such compensations should be assessed by three commissioners were held to be valid: *Willyard v. Hamilton*, 7 O. (pt. 2) 111; *Work v. State*, 2 O. S. 296; *Kramer v. Railroad*, 5 O. S. 140.

2. Under constitution of 1851. By his section of the constitution a complete judicial proceeding is contemplated, the jury to be in the jury box to pass on questions of fact, and the judge on the bench to decide questions of law: *State, ex rel., v. Waite*, 2 O. C. C. (N.S.) 49, 15 O. C. D. 216.

A statute which provides for having the amount of compensation determined by commissioners or viewers in the first instance is constitutional if it secures a jury upon appeal: *Lamb v. Lane*, 4 O. S. 167; *In re Wells County Road*, 7 O. S. 16; *Reckner v. Warner*, 22 O. S. 275.

A statute which authorizes a cemetery association to appropriate realty for an entrance, and which by an erroneous reference to a title and chapter of the Revised Statutes (referring by mistake to chapter 6 instead of to chapter 7) does not secure trial by jury, is unconstitutional: *King v. Cemetery Association*, 67 O. S. 240.

General Code § 6476, providing in ditch appeals, that upon the question "whether said ditch will be conducive to the public health, convenience or welfare," and "whether the route thereof is practicable," it shall be necessary for only eight jurors to agree to return a verdict, is not in conflict with § 5 or § 19, of Art. I: *Emig v. Commissioners*, 5 O. N. P. 471, 5 O. D. (N.P.) 459.

General Code §§ 6494 and 6495, providing for the improvement of ditches in villages, is not unconstitutional because wanting in "due process" in not providing for a jury to assess compensation, for which provision is made in other sections of the same chapter; or in not limiting the power of taxation and assessment, inasmuch as the constitutional limitation applies to cities and villages and not to counties: *McCaslin v. Perrysburg*, 6 O. N. P. (N.S.) 48, 18 O. D. (N.P.) 196 [affirmed, *McCaslin v. Perrysburg*, 10 O. C. C. (N.S.) 325, 20 O. C. D. 103].

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One whose property is appropriated for a county road is entitled to have the amount of his compensation assessed by a jury: *In re Road*, 7 O. S. 16.

Whether the provision of the constitution requiring a jury applied to cases pending when the constitution was adopted was a question, but not decided in *In re Road*, 7 O. S. 16.

The term "jury" in this section means twelve men sworn to determine the facts in a judicial proceeding, whose verdict to be valid must be unanimous: *Lamb v. Lane*, 4 O. S. 167; *Work v. State*, 2 O. S. 297; *Shaver v. Starrett*, 4 O. S. 494.

VII. NO DEDUCTION FOR BENEFITS.

Whether special benefits, or such as accrue directly and solely to the owners of the lands appropriated, may be taken into consideration and allowed for—*quaere*: *Railway v. Collett*, 6 O. S. 182.

That benefits could be deducted from the value of property appropriated under the constitution of 1802, see *Kramer v. Railway*, 5 O. S. 140.

The provisions of this section and of Art. XIII, § 5—the one requiring compensation to be made without deduction for benefits, when property is appropriated to a public use, and the other providing for compensation irrespective of benefits, where it is taken by a corporation for a right of way—are, in legal effect, identical. When taken under either section, its fair market value in cash, at the time it is taken, must be paid to the owner; and the jury, in assessing the amount, have no right to consider or make any use of the fact that it has been increased in value by the proposal or construction of the improvement: *Giesy v. Railroad*, 4 O. S. 309.

"Can the damages to the residue of the land through which the appropriation is made, be reduced by deducting therefrom, or setting off against them, the resulting benefits of the railroad to such residue of land?"

"The provisions of the constitution of this state on this subject, are somewhat different from the provisions in the constitutions of some of the other states. 'Full compensation' is required to be made to the owner in money for the appropriation of his property, as a condition precedent. To be a full compensation it must be a remuneration or recompense for that detriment or loss to the owner in the value of his property arising from the taking of his property in connection with the use for which it is taken. Where a piece or strip of land is taken and severed by the appropriation from its connection with other land of the owner, some elements of compensation necessarily enter into the computation besides the abstract value of the number of feet or acres of ground actually taken. These elements of compensation may be comprehended in the following:

"1. The abstract value of the quantity of ground taken.

"2. The value arising from the relative situation of the land, taken in connection with the residue of the owner's land from which it is severed; and

"3. The effect upon the value of the residue of the owner's land arising from the uses for which the appropriation is made. These grounds of compensation will give the landowner a recompense for the loss in the value of his property caused by the appropriation, for the special purposes or use for which it is authorized. Thus far, and thus far only, is the loss in the value of the residue of the land of the owner to be taken into account in making up the amount of the compensation to be paid": *Railway v. Ball*, 5 O. S. 568.

Under this provision it was held at first that if property was appropriated for opening a street, the cost thereof could be assessed upon the remainder of the tract from which such part had been appropriated: *Cleveland v. Wick*, 18 O. S. 303.

This view was followed in many subsequent cases: *Schroder v. Overman*, 61 O. S. 1; *Cincinnati v. Batsche*, 52 O. S. 324; *Caldwell v. Carthage*, 49 O. S. 334; *Krumberg v. Cincinnati*, 29 O. S. 69; *Henkle v. Cincinnati*, 37 Bull. 394 (editorial).

The supreme court of the United States, however, held that such assessment was invalid as taking property without due process of law: *Norwood v. Baker*, 172 U. S. 269, 12 O. F. D. 228.

The Ohio courts have followed the decision of the supreme court of the United States and now hold such assessments invalid: *Railway v. Cincinnati*, 62 O. S. 465; *Dayton v. Bauman*, 66 O. S. 379; *Rhodes v. Toledo*, 6 O. C. C. 9, 3 O. C. D. 325 [affirmed, without report, *Toledo v. Rhodes*, 51 O. S. 562]; *Freeman v. Hunter*, 7 O. C. C. 117, 3 O. C. D. 689 [affirmed, without report, *Hunter v. Freeman*, 51 O. S. 574].

VIII. EFFECT OF CONSTITUTIONAL PROVISION ON SPECIFIC STATUTES.

A. Notice. Notice by publication in the making of a street improvement instead of personal notice to the property owner, does not

contravene this section: *Emery v. Cincinnati*, 4 O. N. P. 220, 6 O. D. (N.P.) 411.

A statute providing for a preliminary resolution and notice thereof in case of sewer improvements to be paid for by taxation (R. S. § 2304) was held to be valid in *Savings Co. v. Cincinnati*, 12 O. D. (N.P.) 218.

Personal notice to the owner of land sought to be taken for the construction of a ditch is not indispensable in order to its condemnation and appropriation under said act, the notice by publication provided for therein being for that purpose sufficient: *Cupp v. Commissioners*, 19 O. S. 173.

A landowner failing to make application for compensation or damages within the time limited by the act, will be deemed and held to have waived his right to the same, although he had no actual notice of the proceeding; and the provision in said act to that effect is not in conflict with § 19, Art. I, of the state constitution: *Cupp v. Commissioners*, 19 O. S. 173.

It is necessary to the validity of an assessment on real estate, other than general taxes, that somewhere along the line of the proceedings, notice be given to the owner, and an opportunity afforded him to be heard in opposition or defense.

General Code §§ 8909, 8910, 8911 and 8912 are in conflict with §§ 16 and 19, of Art. I, of the constitution, and are void, for the reason that they attempt to authorize the taking of private property for private purposes, and without due course of law: *Railway v. Keith*, 67 O. S. 279 [reversing *Railway v. Keith*, 21 O. C. C. 669, 12 O. C. D. 208].

B. Taxes and assessments. Section 19, of Art. I, of the constitution, is a limitation upon § 6, of Art. XIII, as to the power of assessments: *Railway v. Cincinnati*, 62 O. S. 465.

Legislation authorizing cities and villages to levy special assessments, for the purpose of improving streets, upon real estate peculiarly and specially benefited, and in proportion to such benefit, is not repugnant to any provision of the constitution of 1802: *Hill v. Higdon*, 5 O. S. 243.

The "one mile assessment pike" laws (G. C. §§ 7232 to 7309) are valid: *Grove v. Commissioners*, 8 O. C. C. 166, 4 O. C. D. 382 [affirmed, without report, *Grove v. McDonald*, 52 O. S. 664].

C. Corporation taxes. A franchise tax upon corporations (see G. C. § 5522, et seq.) is not rendered invalid by this provision: *State v. Eridge Co.*, 6 O. N. P. (N.S.) 55, 18 O. D. (N.P.) 273; see, also, *Southern Gum Co. v. Laylin*, 66 O. S. 578.

D. Tax sales. General Code § 8522, in so far as it undertakes to establish possession in the purchaser at a tax sale or those claiming under him prior to its enactment, is in conflict with this section: *Magruder v. Esmay*, 35 O. S. 221.

E. Public improvements. The act of January 27, 1853 (S. & C. 1289), entitled, "an act for opening and regulating roads and highways," as amended, April 8, 1856 (S. & C. 1301), was not repugnant to the provisions of the constitution relating to trial by jury as contained in §§ 5 and 19, of Art. I. The right of appeal therein provided for, to the probate court, where a constitutional jury may be had, validates the statute; and the provision therein for an appeal bond, with sureties, conditioned for the payment of costs adjudged against the appellant, does not contravene the right of trial by jury, as guaranteed by the constitution: *Reckner v. Warner*, 22 O. S. 275.

The proviso in § 6, of the act of January 27, 1853 (S. & C. 1291), declares a rule of evidence whereby a waiver, on the part of the landowner, of his right to compensation, may be established, and does not conflict with the constitution (§ 19, Art. I), relating to the inviolability of private property. The rule contained in this proviso can not be regarded either as a statute of limitation, whereby a right secured by the constitution is barred immediately upon the accruing thereof, or as a statute declaring the forfeiture of private property: *Reckner v. Warner*, 22 O. S. 275.

An act "to authorize the making of roads and bridges (drains) in certain cases," passed February 8, 1847, and an amendatory act, passed March 8, 1850 (S. & C. 526, 527), were declared unconstitutional in *Wilkinson v. Culp*, 40 O. S. 86.

The act of April 30, 1869, "authorizing the building and repairing of levees to protect lands from overflow," is in contravention of § 19, of the bill of rights, inasmuch as under its provisions, private property may be appropriated without reference to the public welfare, and also, inasmuch as no provision is made therein for the assessment of compensation by a jury. The body of men provided for in §§ 6 and 7, of the act, is not a jury within the meaning of the constitution, because they are not authorized to hear testimony, nor are

they subject to judicial direction in the hearing of the case, nor in the making up of their finding or report: *Smith v. Railway*, 25 O. S. 91.

An appropriation of land for a ditch, by county commissioners, under § 22 (70 v. 82; repealed, 94 v. 373), was constitutional. There was under said section and laws, a mode of assessing compensation for land taken under said act, in that it provided for an appeal from the county commissioners to the probate court, in which court a jury might be had under the rules of said court: *Chesbrough v. Commissioners*, 37 O. S. 508.

The act of May 1, 1862, entitled, "an act to provide for locating, establishing and constructing ditches, drains and watercourses in townships," is not repugnant to the constitution of the state in so far as its provisions relate to the taking of private property for township ditches, when the public health, convenience, or welfare demands it; nor in so far as its provisions relate to the mode of compensating the owner for property taken for public use; nor in so far as its provisions relate to the assessment of the costs and expenses of constructing the ditch upon lands benefited thereby: *Sessions v. Crunkilton*, 20 O. S. 349.

The act of May 1, 1854, "authorizing the trustees of townships to establish watercourses," etc., and the amendatory act of April 14, 1857, are in contravention of § 19, of the bill of rights, inasmuch as they authorize an appropriation of private property without reference to the public welfare: *Reeves v. Treasurer*, 8 O. S. 333.

The statutory provisions on the subject of cleaning and repairing watercourses are not rendered invalid by this section: *Taylor v. Crawford*, 72 O. S. 560 [reversing *Crawford v. Taylor*, 6 O. C. C. (N.S.) 278, 17 O. C. D. 245].

General Code §§ 6494 and 6495, providing for improvement of ditches in villages is not unconstitutional as wanting in "due process of law," in not providing for a jury to assess compensation: *McCaslin v. Perrysburg*, 6 O. N. P. (N.S.) 48, sub nomine, *McCastin v. Perrysburg*, 18 O. D. (N.P.) 196 [affirmed, *McCaslin v. Perrysburg*, 10 O. C. C. 325, 20 O. C. D. 103].

General Code § 6773 authorizes the taking of private property in the improvement of, and removal of, an obstruction from a living stream for the public benefit without compensation to the owner, in violation of Art. I, § 19, of the constitution, and is, therefore, null and void: *Kiser v. Commissioners*, 85 O. S. 129.

The act of January 31, 1871 (repealed, 99 v. 382 and 89 v. 351), of the Revised Statutes in so far as it required the owner of a dam constructed across a stream not navigable and who had enjoyed the adverse use of such dam for the period of twenty-one years, to construct and maintain at his own expense a chute or passageway over the same for fish, was unconstitutional. Whether the act was valid where the adverse use is less than twenty-one years, was not decided: *Woolever v. Stewart*, 36 O. S. 146.

A statute which provided that inquiry into damages caused by public improvement should be made after the improvement was complete (see G. C. § 3824) was held to be valid: *Toledo v. Preston*, 50 O. S. 361.

There was no provision in the statutes whereby the owner of material taken by a supervisor for the repair of a public highway, under G. C. §§ 7137 to 7139 in its original form, could have his compensation assessed by a jury as required by § 19, of the bill of rights, and it is therefore invalid: *Hendershot v. State*, 44 O. S. 208.

General Code §§ 7137 to 7139, authorizing road supervisors to secure gravel from unimproved land for road repairs, the compensation to be fixed by trustees, is invalid: *Snyder v. McCollough*, 6 O. N. P. (N.S.) 567, 17 O. D. (N.P.) 140.

Where by the terms of annexation of a village to a city it is stipulated that "all grades of streets heretofore established within and by the proper authorities of said village shall be respected, but the same may be altered with the consent of the property owners or on payment of damages that may be agreed upon or ascertained by law," it was held that the only effect of such annexation agreement was to place the street grades established by the village authorities on the same footing with street grades established by the city authorities, and damages to improvements on abutting lots and the additional cost of street construction caused by such change of grade assessed by the foot front upon such lot in common with others on said street is not a violation of this section: *Thale v. Cincinnati*, 1 O. N. P. 427, 3 O. D. (N.P.) 131.

This section and the police power of the state justify the enactment of G. C. § 8874, et seq., providing for the elimination of grade crossings, and G. C. § 8885, fixing a time for judicial inquiry as to damages resulting therefrom: *Quinby v. Cleveland*, 16 O. F. D. 583.

A former statute (B., § 3574-1; 90 v. 153) which authorized a cemetery association to appropriate land, but which by mistake in its reference to the statutes, which were to control, did not secure a trial by jury upon the question of compensation, was held to be invalid in *King v. Cemetery Association*, 67 O. S. 240.

For the present form of this statute, see G. C. §§ 10099, 10100.

F. Quasi public purposes. Act of April 30, 1852 "to provide for compensation to owners of private property appropriated for the use of corporations," was held to be constitutional: *State, ex rel., v. Railroad*, 17 O. S. 103.

General Code § 3399, et seq., and § 10128, et seq., which authorize the appropriation of private property for certain public utilities are not rendered invalid by this section: *Light Company v. White*, 5 O. N. P. (N.S.) 201, 52 Bull. 354 [affirmed, without report, *White v. Light Co.*, 77 O. S. 633].

A statute which provided that the damages caused by construction of telephone or telegraph lines should be determined by appraisers appointed by county commissioners (R. S. § 3461-2), was held to be unconstitutional in *Telephone Co. v. Cush*, 14 O. D. (N.P.) 148.

"It is the right and duty of judicial tribunals to determine whether a legislative act, drawn in question in a suit pending before them, is opposed to the constitution, and if so found, to treat it as a nullity. In such case the presumption is always in favor of the validity of the law, and it is only where manifest assumption of authority, and a clear incompatibility between the constitution and the law appear, that the judicial power will refuse to execute it. It was competent for the legislature under the constitution of 1802 to construct works of internal improvement on behalf of the state, or to aid in their construction by subscribing to the capital stock of corporations created for that purpose, and to levy taxes to create the means, and, by an exercise of the same power, to authorize a county to subscribe to a work of that character running through or into such county, and to levy a tax to pay the subscription": *Railway v. Commissioners*, 1 O. S. 77.

An act of the general assembly authorizing the trustees of a township through which a railroad was to be made, to subscribe on behalf of the township to the capital stock of the railroad company, was not in conflict with the constitution of 1802: *Railroad v. Trustees*, 1 O. S. 105.

See, however, Art. XII, § 6, of the constitution of 1851.

An ordinance conferring the right to lay tracks within a city, can not give the power to lay tracks outside of the municipality, otherwise it would violate the above section: *Commissioners v. Light & Power Co.*, 9 O. C. C. 183, 6 O. C. D. 290.

The provisions contained in G. C. §§ 9108 and 9109 prior to the amendment of April 11, 1890 (78 O. L. 178), are constitutional. Whether those added by that amendment are constitutional is doubtful, but if unconstitutional, they are distinct and separable from those of the original section, and do not affect their validity: *Railway v. Railway*, 50 O. S. 603.

G. Railways. General Code § 8908 requiring railroad companies to construct and keep open ditches of sufficient depth, width and grade to conduct to some proper outlet, the water which accumulates along the sides of such roadbed from the construction or operation of such road, is a valid statute in so far as the accumulation of water is injurious to the contiguous lands, or detrimental to the public, but invalid where such water is not injurious to such lands or the public.

In so far as §§ 16 and 19, of Art. I, of the constitution, conflict with the common law, these sections must prevail over that law. And this is so, whether the conflict is as to the right or remedy: *Railway v. Keith*, 67 O. S. 279 [reversing *Railway v. Keith*, 21 O. C. C. 669, 12 O. C. D. 208].

General Code § 8970 imposes upon every railroad company operating railroad or part thereof in this state, an absolute liability for loss or damage by fire, originating on its land, caused by operating the road; and the fact that the fire originated on the land of the company is made prima facie evidence that it was caused by operating the road. In an action for such loss or damage, it is not necessary to allege or prove negligence on the part of the company; nor is the absence of such negligence a defense.

These provisions of the statutes are constitutional. They neither impair the obligation of contracts, nor deprive railroad companies of property without due process of law, nor deny them the equal protection of the law, and they have uniform operation throughout the state. Whether § 3, of the act, which provides for taxing as part of the costs an attorney's fee for the successful party on appeal, is constitutional—quaere. But if not, it is severable from the remaining provisions, and does not affect their validity: *Railway v. Kreager*, 61 O. S. 312 [affirming *Railway v. Falk*, 16 O. C. C. 125, 8 O. C. D. 765].

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H. Entailed estates. A statute which authorizes the sale of entailed estates (G. C. § 11925, et seq.) is valid as far as it applies to estates created after its enactment, and as to such estates it is not in violation of this section of the constitution: *Nimmons v. Westfall*, 33 O. S. 213.

Such provisions were unconstitutional as far as they applied to the estates in tail which were in existence when the statute was passed: *Gilpin v. Williams*, 25 O. S. 283; see, also, *Reams v. Wolls*, 61 O. S. 131.

I. Occupying claimants. The occupying claimant act in the form in which it permitted the true owner of the property to decide whether he would retain the property and make compensation for the improvements, or whether he would surrender the property and receive compensation for the value of the property without the improvements, was held to be valid, but in the form in which it gave such option to the person who was found not to be the true owner of the property it was invalid: *McCoy v. Grandy*, 3 O. S. 463.

J. Intoxicating liquor. It was held that the provision of the Scott law, passed April 17, 1883, amended (see G. C. § 6071), imposing an assessment on the business of trafficking in intoxicating liquors, and making the same a lien upon the premises where the business was carried on, would not be construed so as to operate upon real estate held by a tenant under a lease for a term executed before the passage of the statute: *State, ex rel., v. Frame*, 39 O. S. 399.

The provision of the law imposing a tax on the business of selling intoxicating liquors (see G. C. § 6071) which makes the tax a lien on the property in which the business is carried on, is not in conflict with Art. I, § 19: *Anderson v. Brewster*, 44 O. S. 576; see, also, *Pioneer Trust Co. v. Stich*, 71 O. S. 459.

General Code §§ 6193 to 6201, prohibiting the sale or giving away of intoxicants in houses of ill-fame and providing a penalty for such action, which shall be a lien upon the real estate, is valid: *State v. Allen*, 3 O. N. P. 201, 6 O. D. (N.P.) 43.

The fact that local option statutes (see G. C. § 6108, et seq.) may in their operation destroy the value of saloons in districts in which the sale of liquor is forbidden; and may decrease the value of breweries in such districts, does not render such legislation invalid as a violation of this section: *Scheu v. State*, 83 O. S. 146 [citing and following *Adler v. Whitbeck*, 44 O. S. 539; *Anderson v. Brewster*, 44 O. S. 576; *Gordon v. State*, 46 O. S. 607].

K. Fish and game laws. Whether the requirements (repealed, 99 v. 382) of the fish and game laws of Ohio as to licenses upon fishing nets are unconstitutional was queried but not decided in *French v. Shirley*, 7 O. N. P. 26, 9 O. D. (N.P.) 181.

L. Pure food laws. The pure food laws which forbid the sale of articles except in so far as they conform to specified standards are valid: *Weller v. State*, 53 O. S. 77; *Williams v. McNeal*, 7 O. C. C. 280, 4 O. C. D. 596.

An ordinance regulating the sale of milk and cream, and providing for an examination of the places where produced and the product sold, and for the issuing of a permit to sell by the board of health, is not burdensome to the producer or inimical to the constitution: *Walton v. Toledo*, 3 O. C. C. (N.S.) 295, 13 O. C. D. 547 [affirmed, without report, *Walton v. Toledo*, 69 O. S. 548].

M. Billboards. A municipal ordinance prohibiting billboards was held unconstitutional: *Cleveland v. Bryan*, 8 O. N. P. 552, 11 O. D. (N.P.) 473.

N. Cemeteries. The establishment of a cemetery within a former prohibited distance of a dwelling house and without giving right of compensation for depreciation, is void (see G. C. § 3442): *Norton v. Trustees*, 8 O. C. C. 335, 4 O. C. D. 422 [affirmed, without report, *Paine v. Norton*, 54 O. S. 682].

O. Animals. A statute which authorized certain officers to kill neglected or abandoned animals, which in the opinion of three reputable citizens were injured or diseased past recovery, or were useless by reason of age (R. S. § 3725a), was held to be unconstitutional in *Brill v. Ohio Humane Society*, 4 O. C. C. 358, 2 O. C. D. 594.

A statute which provided that a humane society should dispose of all dogs upon which a license fee was unpaid, was held to be unconstitutional in *Fagin v. Humane Society*, 6 O. N. P. 357, 9 O. D. (N.P.) 341.

A city ordinance for the sale of unlicensed dogs was held unconstitutional: *Archer v. Baertschi*, 8 O. C. C. 12, 4 O. C. D. 416..

P. Dealers in secondhand articles. General Code §§ 6370 to 6374, which require junk dealers and dealers in secondhand articles of any

kind, to put up a sign and keep a book containing a description of articles purchased and to retain such articles for at least thirty days before disposing of the same, etc., are a necessary and reasonable exercise of the police power and are, therefore, constitutional: *Phillips v. State*, 77 O. S. 214.

Sections 4364-42, 4364-43, 4364-44 and 4364-45, Revised Statutes, making it a crime to have in possession, for use or sale, certain bottles or other vessels without the written consent of the owner, and providing for search warrant to seize and restore such property to the owner, were invalid, being in conflict with §§ 1, 14 and 19, of Art. I, of the constitution of Ohio: *State v. Schmuck*, 77 O. S. 438.

Q. Conditional sales. General Code § 8565, et seq., which regulates conditional sales of private property is valid: *Weil v. State*, 46 O. S. 450.

R. Replevin. "The plaintiff's affidavit in replevin of his property and right of possession, and the defendant's possession and claim of right to the same property, make a case of disputed ownership to the chattel replevied. Our statute directs its seizure and delivery over to the plaintiff, if he will give bond with surety to pay to the defendant all damages; and if he do so, then the disputed right of the defendant to the chattel becomes a mere right in action to recover its value from the plaintiff and his sureties; but if the plaintiff fails to give bond, then the property is returned to the defendant, and the plaintiff's right to the chattel is changed into a mere right to recover its value, in that action from the defendant. And to this there is no constitutional objection": *Smith v. McGregor*, 10 O. S. 461.

S. Mob violence. The act of the legislature of Ohio, entitled, "An act for the suppression of mob violence," passed April 10, 1896 (G. C. §§ 6278 to 6289), is constitutional.

The recovery authorized by said act is penal in its nature, and it is within the legislative power to provide therefor. Such legislation is not an exercise of judicial power; nor is it a violation of the right of trial by jury: *Commissioners v. Church*, 62 O. S. 318 [affirming *Mitchell v. Commissioners*, 10 O. C. D. 801, which reversed *Mitchell v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262, and reversing *Caldwell v. Commissioners*, 15 O. C. C. 167, 8 O. C. D. 56, which affirmed *Caldwell v. Commissioners*, 4 O. N. P. 249, 6 O. D. (N.P.) 367].

T. Restriction upon contract. The act of April 16, 1900, 94 Ohio Laws, 357, entitled: "An act to provide for limiting the hours of daily service of laborers, workmen and mechanics, employed upon public work, or of work done for the state of Ohio, or any political subdivision thereof, providing for the insertion of certain stipulations in contracts of public works; imposing penalties for violations of the provisions of this act and providing for the enforcement thereof," is in conflict with §§ 1 and 19, of Art. I, of the constitution of Ohio, because it violates and abridges the right of parties to contract as to the number of hours labor that shall constitute a day's work, and invades and violates the right, both of liberty and property, in that it denies to municipalities and to contractors and subcontractors the right to agree with their employes upon the terms and conditions of their contracts. Said act is therefore unconstitutional and void: *Cleveland v. Construction Co.*, 67 O. S. 197.

An ordinance of the city of Cleveland limiting the wages of common laborers and the number of hours they might be employed in any public work, which was to be let by contract in unconstitutional: *State, ex rel., v. Norton*, 5 O. N. P. 183, 7 O. D. (N.P.) 354.

A statute which forbade an employer to attempt to prevent his employes from joining a labor organization (see G. C. § 12943) was held to be held unconstitutional in *State v. Bateman*, 7 O. N. P. 487, 10 O. D. (N.P.) 68. Apparently the same view was taken in *State v. Brookman*, 72 O. S. 428. Such statute was held to be constitutional in *In re Berger*, 12 O. N. P. (N.S.) 401, and in *Davis v. State*, 30 Bull. 342.

The act, entitled, "An act to define trusts," etc. (93 O. L. 143), in so far as it forbids independent corporations to enter into combinations to restrict competition in trade with a view to exacting from consumers higher prices than would prevail under the conditions of open competition, is an exercise of legislative power not repugnant to any limitations prescribed by either the state or federal constitution: *State, ex rel., v. Pipe Line Co.*, 61 O. S. 520.

General Code, § 3673 can not be so construed as to authorize the council of a municipal corporation to impose a license fee upon merchants who do not sell upon the public streets or places, but only solicit orders and negotiate future sales at the residences of their customers: *Tea Co. v. Tippecanoe*, 85 O. S. 120.

The act of May 31, 1911, relating to preservation of the health of females employed in manufacturing, mechanical, mercantile and other establishments, is not in derogation of the constitutional right of freedom of contract, nor is the classification arbitrary or the exemption

Art.I, § 19a. CONSTITUTION OF THE STATE OF OHIO OF 1851.

unreasonable which is therein established, but the act is justified on the ground of public health, morals and the general welfare, and is valid and enforceable: *Ex parte Hawley*, 12 O. N. P. (N.S.) 1 [affirmed, without report, on the grounds stated in the opinion of the common pleas court in *Ex parte Hawley*, 85 O. S. 494].

This section does not render invalid the statute which creates the state liability board of awards (G. C. §§ 1465-37, et seq.): *State, ex rel., v. Creamer*, 85 O. S. 349.

This section does not render invalid G. C. § 666, which forbids a burial insurance company to contract for the services of a specific undertaker so as to prevent the family of the decedent from employing such undertaker as they may wish: *Robbins v. Hennessy*, 86 O. S. 181.

U. Liability of public officers. A special act requiring the board of education to release the sureties on the bond of a county treasurer from liability for school funds of the board, is not in conflict with the constitution. The fact that judgment had been rendered against the sureties will make no difference: *State, ex rel., v. Board of Education*, 38 O. S. 3.

V. Rules of evidence. The proviso in § 6 of the act of January 27, 1853 (S. & C. 1291), declares a rule of evidence whereby a waiver, on the part of the landowner, of his right to compensation may be established, and does not conflict with the constitution (Art. I, § 19) relating to the inviolability of private property. The rule contained in this proviso can not be regarded either as a statute of limitation whereby a right secured by the constitution is barred immediately upon the accruing thereof, or as a statute declaring the forfeiture of private property: *Reckner v. Warner*, 22 O. S. 275.

Section 218-223, Bates' Statutes, in so far as it attempts to make the findings, maps, plats and surveys prepared by the canal commission competent or prima facie evidence of the truth of such findings, or the boundaries of such lands, or that the state has the ownership of such lands, or an interest therein, is unconstitutional and void, being in conflict with § 19, of the bill of rights, and § 28, of Art. II, of the constitution: *State v. Tin & Japan Co.*, 66 O. S. 182.

86 v. 270 (§ 218-223 Bates' Statutes), was held to be unconstitutional as far as applicable to pre-existing cases of action: *State v. Tin & Japan Co.*, 21 O. C. C. 218, 11 O. C. D. 587 [affirmed, without report, *State v. Tin & Japan Co.*, 65 O. S. 605].

The provisions of G. C. § 8522, as to what shall constitute conclusive proof of possession, is an unconstitutional confiscation of property, and without the aid of this section the defendants claim of title by adverse possession fails: *Coal Co. v. Railroad*, 7 O. C. C. (N.S.) 554, 18 O. C. D. 618.

1 Debates, 164, 290-293; 2 Debates, 176-182, 220-240, 318, 634, 652, 653, 663, 664, 806, 826, 827, 857, 870.

Damage for
wrongful death.

SECTION 19a. The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law. (Adopted September 3, 1912.)

Vote: "Yes," 355,605; "No," 195,216.

Powers reserved
to the people.

SECTION 20. This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people. (*See Const. 1802, Art. VIII, § 28.*)

See Const. 1802, Art. VIII, § 28.

Cited: *Cass v. Dillon*, 2 O. S. 607; *Mirick v. Gims*, 79 O. S. 174; *State v. Gardner*, 2 O. N. P. 405, 4 O. D. (N.P.) 34; *Columbus v. Bohl*, 1 O. N. P. (N.S.) 469, 13 O. D. (N.P.) 569; *Bank v. Knoop*, 57 U. S. (16 How.) 369.

Under this provision the rights and powers which are not conferred by this constitution remain vested in the people: *Wells v. Lewis*, 12 O. D. (N.P.) 170.

This section does not restrict or limit the powers which are conferred by the remaining clauses of the constitution: *State, ex rel., v. Covington*, 29 O. S. 102.

This section was said to be intended to prevent enlargement by construction or otherwise of the powers granted to the government by the remaining provisions of the constitution: *Railway v. Commissioners*, 1 O. S. 77.

General Code §§ 200, 219 and 12685, establishing a bureau of vital statistics and providing for prompt and permanent registration of all births and deaths occurring within the state of Ohio (99 v. 296) so far as they relate to a physician or midwife, are unconstitutional and void, because they were enacted by an unnecessary, unreasonable and arbitrary exercise of the police power: *State v. Boone*, 84 O. S. 346.

Since this section of the constitution expressly excludes from the legislative department, the exercise of any power which is not delegated to it in the constitution, the authority of a single branch of the legislature to act separately, must be found in express terms or by necessary implication in the constitution: *State, ex rel., v. Guilbert*, 75 O. S. 1.

This section does not render invalid a statute which authorized the governor to appoint officers of boards for municipal corporations: *State, ex rel., v. Smith*, 44 O. S. 348.

This section does not render invalid the "compulsory education law" (see G. C. § 7762, et seq., and § 12974, et seq.): *Quigley v. State*, 5 O. C. C. 638, 3 O. C. D. 310 [affirmed, without report, *Quigley v. State*, 27 Bull. 332].

This section does not render invalid a statute which provides for detaching farm lands from municipal corporations (see G. C. § 3578): *Grover Hill v. McClure*, 6 O. C. C. (N.S.) 197, 17 O. C. D. 376 [affirmed, without report, *Grover Hill v. McClure*, 72 O. S. 676].

2 Debates, 231, 337, 464, 806, 827, 857, 870.

ARTICLE II.

LEGISLATIVE.

"All of this article is devoted to the subject of legislative powers and duties. But it has respect to future legislative bodies and future legislation under this constitution, rather than to past, under the former constitution": *Allbyer v. State*, 10 O. S. 588.

A joint resolution of the general assembly is ineffectual to modify statute law either by way of appeal or amendment: *State v. Kinney*, 56 O. S. 721.

A member has no right to solicit, ask, or invite any one to give him money, either for himself or other member, as a consideration of any official action by him: *State v. Geyer*, 3 O. N. P. 242, 5 O. D. (N.P.) 646.

SECTION 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided, and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws. (As amended September 3, 1912.)

In whom legislative power is vested.
Initiative and Referendum.

Vote: "Yes," 312,592; "No," 231,312. In effect October 1, 1912.

Original § 7 read as follows: "Sec. 7. [In whom legislative power is vested] The legislative power of this state shall be vested in a general assembly, which shall consist of a senate, and a house of representatives. (See Const. 1802, Art. I, § 1.)"

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| I. Applied, cited, construed, referred to, etc. | VI. Police power. |
| II. Scope and effect of grant of legislative power. | VII. Judicial power. |
| III. Taxing power. | VIII. Vesting power in the general assembly. |
| IV. Intoxicating liquors. | IX. Delegation of legislative power |
| V. Public corporations and officers. | X. Validity of Initiative and Referendum provisions. |

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Adler v. Whitbeck, 44 O. S. 539; *Anderson v. Brewster*, 44 O. S. 576; *Marmet v. State*, 45 O. S. 63; *State, ex rel., v. Ferris*, 53 O. S. 314; *State v. Gardner*, 54 O. S. 24; *State, ex rel., v. Bode*, 55 O. S. 224; *State, ex rel., v. Bloch*, 65 O. S. 370; *State v. Guilbert*, 70 O. S. 229; *Lucas Co. v. State*, 75 O. S. 114; *Weitzel v. Slavin*, 13 O. C. C. 221, 7 O. C. D. 155; *State, ex rel., v. Columbus*, 9 O. C. C. 134, 6 O. C. D. 36 [affirmed, without report, *Mills v. Board of Elections*, 54 O. S. 631]; *Mitchell's Administrator v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262; *State, ex rel., v. Oviatt*, 4 O. N. P. (N.S.) 481; *Board of Education v. Sawyer*, 7 O. N. P. (N.S.) 401, 19 O. D. (N.P.) 1; *Columbus v. Heating and Lighting Co.*, 16 O. D. (N.P.) 311; *State, ex rel., v. Commissioners*, 17 O. D. (N.P.) 451.

II. SCOPE AND EFFECT OF GRANT OF LEGISLATIVE POWER.

The same provision, in nearly the same words, is found in the former constitution. It will be observed that the provision is not, that the legislative power as conferred in the constitution shall be vested in the general assembly, but that the legislative power of this state shall be vested. That includes all legislative power which the object and purposes of the state government may require, and we must look to other provisions of the constitution to see how far, and to what extent, legislative direction is qualified or restricted. Hence the difference between the constitution of the United States and a state constitution such as ours. In the former we look to see if the power is expressly given; in the latter to see if it is denied or limited: *Baker v. Cincinnati*, 11 O. S. 534.

By the terms of our state constitution, "the legislative power of the state" is declared to be "vested in the general assembly." This grant of power is general in its terms, not special; it embraces all such legislative power as the people of the state could, under the federal constitution confer—the whole "legislative power of the state." The limitations upon the exercise of the power thus broadly conferred, are special, and are to be found in other parts of the same instrument. The act in question is not an encroachment upon the powers or functions delegated to other departments of the government; that is to say, the nature of its subject-matter is such as to give its enactment a legislative character; and it is not claimed in any quarter, that it interferes with the powers specially delegated to the government of the United States. Therefore, when the power of the general assembly to enact such a law is drawn in question, the proper inquiry is, whether such an exercise of legislative power is clearly prohibited by the constitution. The grant of power being general, the question as to the existence of a limitation, arising from special prohibition: *Baker v. City of Cincinnati*, 11 O. S. 534.

Such prohibition must either be found in express terms, or be clearly inferable, by necessary implication, from the language of the instrument, when fairly construed according to its manifest spirit and meaning: *Cass v. Dillon*, 2 O. S. 607; *State, ex rel., v. Dudley*, 1 O. S. 437; *Lehman v. McBride*, 15 O. S. 573; see, also, *State, ex rel., v. McGann*, 21 O. S. 198.

For the effect of the adoption of the Ohio constitution upon pre-existing legislation, see *State, ex rel., v. Dudley*, 1 O. S. 437; *Cass v. Dillon*, 2 O. S. 607.

The people have thus granted certain political powers, to be exercised for their benefit, until they see fit to resume them, and have retained others. On looking into the constitution we find the granted powers assigned to three great departments of government—the legislative power to the general assembly, the executive power to the governor, and the judicial power to the courts. Unlike the constitution of the United States, and from the necessity of the case, no attempts at a specific enumeration of the items of legislative power is made. This must, therefore, always be determined from the nature of the power exercised. If it is found to fall within the general terms of the grant, we can only look to the other parts of the constitution for limitations upon it; if none are there found, none exist. But, as the general assembly, like the other departments of government, exercises only delegated authority it can not be doubted that any act passed by it, not falling fairly within the scope of legislative power, is as clearly void as though expressly prohibited: *Railroad v. Commissioners*, 1 O. S. 77.

This section is limited by other sections; and some of these limiting sections are directory, others mandatory. The section, that all laws of a general nature shall have a uniform operation throughout the state is mandatory: *McGill v. State*, 34 O. S. 228.

The power granted by this section includes all legislative power, and if restricted it must be by some other clause in the constitution: *Quigley v. State*, 5 O. C. C. 638, 3 O. C. D. 310 [affirmed, without report, *Quigley v. State*, 27 Bull. 332].

A grant of legislative power is limited by other specific provisions of the constitution: *Trust Co. v. Telegraph Co.*, 79 O. S. 89.

The constitution being an instrument locating the powers of the government and defining their exercise, thus establishing and providing for the maintenance of a system of government, its interpretation as an entirety becomes a duty obviously incumbent upon the courts. The occasions for a more comprehensive view are more frequent in the interpretation of this than in the interpretation of other instruments: *State, ex rel., v. Creamer*, 83 O. S. 412.

III. TAXING POWER.

Whatever power of taxation resides in the general assembly, does so as an incident of the general legislative authority delegated to that body by Art. II, § 1: *Board of Education v. State*, 51 O. S. 531.

The power to impose taxes is a legislative power, and is vested in the general assembly by § 1, of Art. II, of the constitution: *State, ex rel., v. Guilbert*, 70 O. S. 229; see, to the same effect, *Ex parte Mosler*, 8 O. C. C. 324, 4 O. C. D. 82; *Scott v. Athens*, 1 O. N. P. 94, 1 O. D. (N.P.) 84; *Crawford v. Madigan*, 13 O. D. (N.P.) 494; *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158; *Insurance Co. v. Commissioners*, 99 Fed. 846, 13 O. F. D. 198.

The acts of March 28, 1864, and April 16, 1867, authorizing county commissioners, township trustees and city councils to levy a tax for the payment of bounties to volunteers, are authorized by the general grant of legislative power: *Trustees v. Dillon*, 16 O. S. 38; *State, ex rel., v. Harris*, 17 O. S. 608; *State, ex rel., v. Trustees*, 20 O. S. 288; *State, ex rel., v. Trustees*, 20 O. S. 362.

The act of April 25, 1904, entitled, "An act to impose a tax upon the right to succeed or inherit property," being a tax not upon property, but upon the right to inherit or succeed to property, the power to enact the same is not affected by the limitations of Art. XII, § 2, of the constitution: *State, ex rel., v. Guilbert*, 70 O. S. 229.

An act imposing a collateral inheritance tax and discriminating among collateral kindred is within the power of the legislature: *Hagerty v. State, ex rel.*, 55 O. S. 613.

While a state has power to enact an inheritance tax law, such law must be in compliance with the other provisions of the constitution: *State, ex rel., v. Ferris*, 53 O. S. 314 [affirming *State, ex rel., v. Ferris*, 9 O. C. C. 298, 6 O. C. D. 158].

The power of taxation was said to be a part of the legislative sovereignty of the state, and is not the subject of contract, or barter, or sale, by the legislature in *Bank v. Debolt*, 1 O. S. 591.

In 1845 the legislature passed a general banking law, the fifty-ninth section of which required the officers to make semiannual dividends, and the sixtieth required them to set off six per cent. of such dividends for the use of the state, which sum or amount so set off should be in lieu of all taxes to which the company, or the stockholders therein would otherwise be subject. On March 21, 1851, an act was passed, entitled, "An act to tax banks, and bank and other stocks, the same as property is now taxable by the laws of this state." The operation of this law being to increase the tax, the question arose whether the latter act, as far as it applied to banks organized under the act of 1845, was an act impairing the obligation of a contract, and in contravention of the tenth section of the first article of the constitution of the United States. In a series of decisions it was held by the supreme court of Ohio that such charters were not contracts: *Mechanics' and Traders' Bank v. Debolt*, 1 O. S. 591; *Toledo Bank v. Bond*, 1 O. S. 622; *Knoup v. Bank*, 1 O. S. 603; *Sandusky City Bank v. Wilbor*, 7 O. S. 481; *Skelly v. Jefferson Branch Bank*, 9 O. S. 606. But the supreme court of the United States reversed those decisions in the cases of *Piqua Branch Bank v. Knoop*, 16 Howard, 369; *Dodge v. Woolsey*, 18 Howard, 331; *Mechanics' and Traders' Bank v. Debolt*, 18 Howard, 380; *Jefferson Branch Bank v. Skelly*, 1 Black, 436, holding that the charters of the banks were contracts fixing the amount of taxation, and not a law prescribing a rule of taxation until changed by the legislature; that such contracts bartering away the power of taxation were valid, and that, therefore, the act of 1851 was unconstitutional.

In our present constitution, as well as in the former, the general grant of legislative authority includes the power of taxation in all its forms. Restrictions upon its exercise are to be looked for in other parts of the instrument. The second section of the twelfth article has established the principles upon which all taxes for general revenue purposes must be levied; but it does not extend to what was then and is still well known as special assessments, because the sixth section of the thirteenth article shows that they were not intended: *Hill v. Higdon*, 5 O. S. 243.

The general grant of legislative power vested in the general assembly by this section includes the power to collect revenue for public purposes and the limitations on the exercise of this power are to be found in other provisions of this instrument, and in the constitution of the United States: *Telegraph Co. v. Mayer*, 28 O. S. 521.

The legislative power with respect to taxation is not unlimited: *State, ex rel., v. Commissioners*, 35 O. S. 458.

The power of taxation is not limited to the payment of legal claims; but extends to those founded only in justice and moral obligation: *Warder v. Commissioners*, 38 O. S. 639.

The power of taxation is limited, but not conferred by Art. XII, § 2, of the constitution. It is included in the legislative power conferred on the general assembly by Art. II, § 1, of that instrument. The limitation is on the power to raise revenue by the taxation of property; all other recognized modes of exercising the power may be resorted to by the legislature whenever in its wisdom it may be deemed necessary: *Adler v. Whitbeck*, 44 O. S. 539.

Art.II, § 1. CONSTITUTION OF THE STATE OF OHIO OF 1851.

This section confers upon the general assembly the power of taxation, but their power extends only to the levying of taxes for the purpose of the state. The act, entitled, "An act to provide relief for worthy blind" (97 O. L. 392), requires the expenditure of public funds for a private purpose and is unconstitutional: *Lucas County v. State, ex rel.*, 75 O. S. 114 [reversing *Davies v. State, ex rel.*, 6 O. C. C. (N.S.) 417, 17 O. C. D. 593].

The power to authorize assessments, as distinguished from taxes proper, is comprehended in the general grant of legislative power to the general assembly: *Reeves v. Treasurer*, 8 O. S. 333.

The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improvement of treets and sidewalks, exists to the same extent under the present constitution as under that of 1802: *Reeves v. Treasurer*, 8 O. S. 333.

The legislature, in the exercise of the general power of taxation, as distinguished from the power of local assessment, may create a special taxing district without regard to municipal or political subdivisions of the state, and may levy a tax on all property within such district by a uniform rule, according to its true value in money, for the purpose of defraying the expenses of constructing and maintaining public roads therein: *Bowles v. State*, 37 O. S. 35.

The levying of taxes by the county commissioners under G. C. §§ 9262-9266, for the purchase of toll roads, in order to make them free to the public, is a constitutional exercise of the taxing power. The levy is for a public purpose: *Warder v. Commissioners*, 38 O. S. 639.

A per capita tax on dogs is not inhibited by the constitution. While the purpose of a statute imposing such tax is the protection of wool-growers, it is an exercise of the police power, and not of the taxing power vested in the general assembly: *Holst v. Roe*, 39 O. S. 340.

The power of taxation, however, included in the legislative power vested in the general assembly by Art. II, § 1, of the constitution is, indeed, wisely regulated and limited by that instrument; but we may well ask what avails the power of taxation, if there is no commensurate power to collect taxes and assessments when imposed. It is not, therefore, we think, beyond the scope of the legislative authority of the state, to enact that the payment of a tax on the business of the liquor traffic shall be secured by a lien on the premises upon which the business is carried on, when the tenant holds under a lease made after the passage of the statute: *Anderson v. Brewster*, 44 O. S. 576.

The legislative branch has the exclusive power of taxation. It may in the absence of constitutional restrictions delegate the taxing power to municipalities in such measure as it deems expedient, but it can not confer any greater power than the state itself possesses, and it must observe the restrictions and limitations of the organic law: *State, ex rel., v. Toledo*, 48 O. S. 112.

The power to value property for taxation is a legislative power and is conferred upon the general assembly by the general grant of legislative power in Art. II, § 1: *Crawford v. Madigan*, 13 O. D. (N.P.) 494.

IV. INTOXICATING LIQUORS.

Under this section, in the absence of constitutional limitations, the power would be ample for the making of laws absolutely prohibiting all traffic in intoxicating liquor: *State v. Frame*, 39 O. S. 399.

Under this section the general assembly may legislate upon the traffic of intoxicating liquors, and may make it the subject of a tax: *Senior v. Ratterman*, 44 O. S. 661.

The act, entitled, "An act to further provide against the evils resulting from the traffic in intoxicating liquors, by local option, in any township in the state of Ohio," passed March 3, 1888 (G. C. § 6119), is not in conflict with this section: *Gordon v. State*, 46 O. S. 607.

The provisions of the Brannock law, whereby forty per cent. of the voters of a residence district may fix the boundaries of the district by their petition to determine whether said district shall be "wet" or "dry," is not an invasion of the legislative power and does not contravene this section: *Ely v. Willard*, 2 O. N. P. (N.S.) 571, 15 O. D. (N.P.) 318.

The provisions in the subject of local option in a municipality (G. C. § 6127, et seq.) are valid under this section of the constitution: *State, ex rel., v. Dollison*, 194 U. S. 445, 14 O. F. D. 380 [affirming *State, ex rel., v. Dollison*, 68 O. S. 688, which affirmed *Lloyd v. Dollison*, 13 O. C. D. 571].

V. PUBLIC CORPORATIONS AND OFFICERS.

The power to detach territory from a municipal corporation is in its nature legislative and is conferred upon the assembly by this section: *Metcalf v. State, ex rel.*, 49 O. S. 586.

The act passed May 17, 1886, entitled, "An act to establish an efficient board of public affairs in cities of the first grade, of the first class" (83 v. 173) is within the legislative power conferred on the general assembly by Art. II, § 1, of the constitution: State, ex rel., v. Smith, 44 O. S. 348.

The general assembly, under the general grant of legislative power contained in this section, may, by law, create a board of police commissioners for a city, to be appointed by the governor, and confer upon such board the power to appoint and control the policemen of such city; and it is no objection to such law that, previous to the adoption of the constitution, the electors of the cities of the state had uniformly elected or appointed their own policemen, either directly or indirectly: State, ex rel., v. Covington, 29 O. S. 102.

A statute granting authority to lay pipes, for the purpose of supplying steam heat, in the streets of municipal corporations, would be clearly authorized by the general grant of legislative power: Kumler v. Silsbee, 38 O. S. 445.

The general assembly, under the general grant of legislative power, secured to it by the constitution, has power to provide by statute for the registration of voters and to enact that all electors must register before being permitted to vote: Daggett v. Hudson, 43 O. S. 548.

An act providing that the term of office of clerks thereafter elected, should begin on the first Monday of August next after their election, is valid: State, ex rel., v. McCracken, 51 O. S. 123.

The act prohibiting the placing of candidates' names on ballots more than once is within the power of the legislature: State, ex rel., v. Bode, 55 O. S. 224.

By this section the assembly is not authorized to confer powers upon courts beyond the authority vested in the assembly by the fourth or judicial article, and the power to grant an injunction in a case pending in the court of common pleas can not constitutionally be conferred on this court: Kent v. Mahaffy, 2 O. S. 498.

An act authorizing the county commissioners to improve a certain road and issue bonds therefor, is invalid, because it is a matter administrative, not legislative: State, ex rel., v. Bader, 12 O. C. C. 659, 5 O. C. D. 703.

The statutes creating the railroad commission, G. C. § 487, et seq., are valid and constitutional: Railway v. Railroad Commission, 21 O. D. (N.P.) 468.

See, also, on this question, Art. II, § 26, III, A, B and C, and Art. XIII, § 1; Art. XIII, § 6.

VI. POLICE POWER.

The act of March 1, 1900 (94 O. L. 33, R. S. §4364-891), entitled, "An act for the better protection of life and property against injury or damage resulting from the operation of steam boilers by incompetent engineers and others, and to repeal an act therein named," known as the Roberts law, is in conflict with Art. II, § 1, and is, therefore, void: Harmon v. State, 66 O. S. 249 (for this act as amended, see G. C. § 1039, et seq.).

The grant of legislative power by this section is broad enough to warrant the general assembly in constituting the tramp a class by himself and legislating for his suppression: State v. Hogan, 63 O. S. 202.

The general assembly has power, except as limited by § 18, of the schedule to the constitution, to regulate occupations by license, and to compel by imposition of a fine, payment of a reasonable fee, where a special benefit is conferred by the public upon those who follow an occupation, or where the occupation imposes special burdens on the public, or where it is injurious or dangerous to the public: Marmet v. State, 45 O. S. 63.

The enactment of laws for the inspection of commodities, is the exercise of a legislative power recognized and sanctioned by long and unquestioned usage here and elsewhere, and is included in the general grant of legislative power conferred by the constitution upon the general assembly; and among the general, if not the invariable, incidents and characteristic features of this class of laws, is the imposition of a charge upon the owners or possessors of the commodities inspected for the services of the inspector, although these services may have been rendered in invitum as to such owner or possessor. It is the legitimate exercise of government supervision over the business of the manufacturers and vendors of certain commodities, in order to protect the public at home and abroad against imposition and fraud, and incidentally to protect manufacturers and vendors themselves against unfounded and unjust claims of vendees and consumers, as well as against the consequences of their own shortsighted cupidity: Coke Co. v. State, 18 O. S. 237.

VII. JUDICIAL POWER.

While the legislature may pass a so-called declaratory statute which in reality changes the pre-existing law and makes such new statute

Art. II, § 1. CONSTITUTION OF THE STATE OF OHIO OF 1851.

apply to cases which apply after its passage, it can not make such statute apply as to cases which arose before its passage: *Schooner Aurora Borealis v. Dobbie*, 17 O. S. 125.

The enactment of the act of March 19, 1868, entitled, "An act supplementary to an act, entitled, 'An act to establish a code of civil procedure,' passed March 11, 1853," is not the exercise of judicial function, but is within the legislative powers of the general assembly: *Peters v. McWilliams*, 36 O. S. 155.

Rules of evidence are part of the substantive law of the state, and power to make, alter or repeal such rules is vested in the assembly by virtue of this section: *State v. Weston & McMahon*, 1 O. N. P. 350, 3 O. D. (N.P.) 15.

The supreme court has held that the legislature can not make sales of stocks of goods in bulk presumptively fraudulent: *Williams & Thomas Co. v. Preslo*, 84 O. S. 328.

A state may make prima facie rules of evidence if there is some rational connection between the fact proved, and the ultimate fact presumed, and if the adversary party is given a reasonable opportunity to present his defense: *Mobile R. R. v. Turnipseed*, 219 U. S. 35; *Lendsley v. Natural Carbonic Gas Co.*, 220 U. S. 61.

VIII. VESTING POWER IN THE GENERAL ASSEMBLY.

This section is a declaration that all the power, legislative in character, of the people within the limits of the territory of Ohio and organized into a government under this constitution, is vested in the general assembly: *State v. Frame*, 39 O. S. 399; see, also, *Plank Road Company v. Husted*, 3 O. S. 578.

This section confers the legislative power upon the general assembly as a unit, and a single branch of the general assembly so acting has no power of independent legislation except as expressly granted in the constitution, or as necessarily implied in the express grants: *State, ex rel., v. Guilbert*, 75 O. S. 1.

IX. DELEGATION OF LEGISLATIVE POWER.

The entire legislative power of the state is vested in the general assembly by this section, and even without the limitation contained in Art. II. § 26, it could not be delegated: *State, ex rel., v. Garver*, 66 O. S. 555.

The legislative branch of the state government is expressly prohibited from exercising judicial powers, except as expressly conferred in the constitution, and it is expressly empowered to define the jurisdiction of the courts. Under the constitution of this state the power of defining the functions of the judicial department is only limited by the general rule that a grant of general powers to any department constitutes of itself an implied exclusion of all other departments from the exercise of such powers; and when the constitution does not distinctly define and distribute judicial powers, and it is not clear whether an act is wholly the exercise of legislative, executive or judicial power, it is within the power of the general assembly as the depository of the legislative power of the state, to determine by which department it shall be exercised: *Fairview v. Giffey*, 73 O. S. 183.

The foundation of the argument against the constitutionality of this act is laid upon the doctrine of the distribution of governmental powers and functions. It seems to be assumed that the separation of executive, legislative, and judicial powers is complete and distinct under the constitution. Theoretically it is so, but in practice it is not so and never was so; and by the best modern writers on political science it is recognized to be practically impossible to define the line of demarkation between the different departments of government. This was well expressed in *Taylor v. Place*, 4 R. I. 332: "To some extent, and in some sense, each of the powers must be exercised by every other department of the government in order to the proper performance of its duty." So likewise it was said by White, J., in *State, ex rel., v. Harmon*, 31 O. S. 250, that "The distribution of powers among the legislative, executive and judicial branches of the government, is, in a general sense, easily understood; but no exact rule can be laid down, a priori, for determining, in all cases, what powers may or may not be assigned by law to each branch. The power of allotting to the different departments of government their appropriate functions is a legislative power; and, in so far as the distribution has not been made in the constitution, the power to make it is in the general assembly, as the depository of the legislative power of the state."

It was long ago convincingly pointed out by Bentham, that the work of the judiciary is, in its final analysis, chiefly judicial legislation; and a distinguished publicist of the present day, Prof. Goldwin Smith, has declared that, "the separation of the executive power from the legislative is a dream, though Montesquieu has established the belief that it is one of the great securities of liberty." And just here it is of some

importance to note the absence of a distributive clause in the constitution of Ohio, although such a clause appears in the constitution of most of the states. It is nevertheless true, in the American theory of government, that each of the three grand divisions of government must be protected from encroachments by the others, so far that its integrity and independence may be preserved. From these considerations it seems to us that at the outset of this argument too much has been assumed for its fundamental proposition.

While there is no clause in the constitution of this state expressly distributing the powers of government, and none expressly restricting the executive and judicial branches, the legislative branch is expressly prohibited from exercising judicial powers, except as expressly conferred in the constitution, and it is expressly empowered to define the jurisdiction of the courts. The power of defining the functions of the executive and judicial departments is clearly a legislative power, which, under the constitution of Ohio, is only limited by the general principle that a grant of general powers to any department constitutes of itself an implied exclusion of all other departments from the exercise of such powers. We quote again from *State, ex rel. v. Harmon*, supra, "In so far as the distribution has not been made in the constitution, the power to make it is vested in the general assembly, as the depository of the legislative power of the state." So that when we come to the border line of legislative power and it is difficult to determine whether an act is wholly within the legislative domain or entirely within the judicial boundaries, the constitution not having clearly defined its position, it is within the power and duty of the legislature to determine to which department it shall belong: *Fairview v. Giffee*, 72 O. S. 183.

General Code § 3578, which provides for detaching unplatted farm lands from municipal corporations does not confer legislative power upon a court of common pleas or judge thereof and is valid and constitutional: *Fairview v. Giffee*, 73 O. S. 183; *Village of Grover Hill v. McClure*, 6 O. C. C. (N.S.) 197, 17 O. C. D. 376 [affirmed, without report, *Grover Hill v. McClure*, 72 O. S. 676].

A general assembly can not delegate to any other body or to the public directly the power to pass laws: *Railway v. Commissioners*, 1 O. S. 77.

A statute which authorizes county commissioners to subscribe to the capital stock of a railroad, provided a majority of the electors of such county will consent thereto at an election held for that purpose, is not a delegation of legislative power: *Railway v. Commissioners*, 1 O. S. 77.

General Code § 9178, et seq., which authorizes a probate court to determine the method in which a telephone and telegraph company is to make use of the streets of a municipal corporation is not a grant of legislative power, and is not in conflict with this provision: *Zanesville v. Telegraph Co.*, 64 O. S. 67 [reversing on rehearing, *Zanesville v. Telegraph Co.*, 63 O. S. 442, and affirming *Telegraph Co. v. Zanesville*, 29 O. C. C. 34, 10 O. C. D. 783, which reversed *Telegraph Co. v. Zanesville*, 10 O. D. (N.P.) 134].

General Code § 9178 is constitutional, but the judgment must be a judicial determination, and not a general grant as to the use of all the streets of a municipality, which would be legislative and in violation of this section: *Telephone Co. v. Cincinnati*, 5 O. C. C. (N.S.) 411, 17 O. C. D. 385 [affirmed, *Telephone Co. v. Cincinnati*, 73 O. S. 64].

1 Debates, 163-166, 168-171; 2 Debates, 141, 318, 560, 632, 664, 807, 831, 857, 870.

X. VALIDITY OF INITIATIVE AND REFERENDUM PROVISIONS.

Whether the provisions of a state constitution for the initiative and referendum render the government of the state one which is not republican in form as required by Art. IV, § 4 of the constitution of the United States is a political and not a legal question; and the Supreme Court of the United States has no jurisdiction to declare unconstitutional a statute which is otherwise valid on the sole ground that it was adopted by the initiative: *Pacific States Telephone and Telegraph Co. v. Oregon*, 223 U. S. 118 [dismissing writ of error to, *Oregon v. Telegraph Co.*, 53 O. S. 162]; *Kiernan v. Portland*, 223 U. S. 151 [dismissing writ of error to *Kiernan v. Portland*, 57 O. S. 454].

SECTION 1a. The first aforestated power reserved by the people is designated the initiative and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein

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provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors." (Adopted September 3, 1912.)

Vote: "Yes," 312,592; "No," 231,312. In effect October 1, 1912.

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SECTION **1b.** When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the

electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor. (Adopted September 3, 1912.)

Vote: "Yes," 312,592; "No," 231,312. In effect October 1, 1912.

SECTION **1c.** The second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect. (Adopted September 3, 1912.)

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Vote: "Yes," 312,592; "No," 231,312. In effect October 1, 1912.

SECTION **1d.** Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum. (Adopted September 3, 1912.)

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Vote: "Yes," 312,592; "No," 231,312. In effect October 1, 1912.

Initiative and
Referendum.

SECTION **1e.** The powers defined herein as the “initiative” and “referendum” shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property. (Adopted September 3, 1912.)

Vote: “Yes,” 312,592; “No,” 231,312. In effect October 1, 1912.

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Referendum.

SECTION **1f.** The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law. (Adopted September 3, 1912.)

Vote: “Yes,” 312,592; “No,” 231,312. In effect October 1, 1912.

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SECTION **1g.** Any initiative, supplementary or referendum petition may be presented in separate parts, but each part shall contain a full and correct copy of the title and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of

the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be It Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved. (Adopted September 3, 1912.)

Vote: "Yes," 312,592; "No," 231,312. In effect October 1, 1912.

SECTION 2. Senators and representatives shall be elected When chosen. biennially by the electors of the respective counties or districts, on the first Tuesday after the first Monday in November; their term of office shall commence on the first day of January next thereafter, and continue two years. (*As amended October 13, 1885: 82 v. 446.*)

As to time of holding elections, see Art. XVI, § 1.

Original § 2 read as follows: "Sec. 2. [When chosen.] Senators and representatives shall be elected biennially, by the electors in the respective counties or districts, on the second Tuesday of October; their term of office shall commence on the first day of January next thereafter, and continue two years." (See Const. 1802, Art. I, §§ 3 and 5.)

Cited by mistake: State, ex rel., v. Garver, 13 O. C. D. 140.

1 Debates, 171-179, 181-226; 2 Debates, 141-149, 318, 560, 632, 664, 807, 831, 857, 870.

Residence.

SECTION 3. Senators and representatives shall have resided in their respective counties, or districts, one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this state. (*See Const. 1802, Art. I, §§ 4, 7.*)

See Const. 1802, Art. I, §§ 4 and 7.

1 Debates, 163, 217, 218, 226-228; 2 Debates, 142, 149, 215, 318, 560, 632, 664, 807, 831, 857, 870.

Eligibility.

SECTION 4. No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have a seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia. (*See Const. 1802, Art. I, § 26.*)

See Const. 1802, Art. I, § 26.

A clerk in the United States pension agency serving by appointment for a period not exceeding three months and compensated with money of the United States appropriated for that purpose by congress, having no duties defined by law nor discretion to act independently of the direction of the pension agent, is not "holding an office under the authority of the United States" within the meaning of Art. II, § 4, of the constitution of the state which renders persons so holding office ineligible to membership in the general assembly: State, ex rel., v. Mason, 61 O. S. 62.

1 Debates, 163, 257, 258; 2 Debates, 164, 182-185, 318, 567, 633, 664, 807, 831, 857, 870.

Who shall not hold office.

SECTION 5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this state; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the general assembly, until he shall have accounted for, and paid such money into the treasury. (*See Const. 1802, Art. I, § 28.*)

See Const. 1802, Art. I, § 28.

Cited: Mason v. State, ex rel., 58 O. S. 30.

1 Debates, 163, 164, 258; 2 Debates, 164, 318, 567, 568, 577, 578, 633, 664, 807, 831, 857, 870.

Powers of each house.

SECTION 6. Each house shall be judge of the election, returns, and qualifications of its own members; a majority of all the members elected to each house shall be a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law. (*See Const. 1802, Art. I, § 8.*)

See Const. 1802, Art. I, § 8.

Cited in dissenting opinion in State, ex rel., v. Smith, 44 O. S. 348.

This section is to be construed with Art. II, § 4, and though the general assembly does not act, the court can not evade that duty: State, ex rel., v. Mason, 61 O. S. 513.

The jurisdiction which Art. II, § 6, confers upon each house of the general assembly "to judge of the election returns and qualifications of its own members," was said to be exclusive in Dalton v. State, ex rel., 43 O. S. 653; Johnson, J., dissented [reversing State, ex rel., v. Dalton, 1 O. C. C. 139, 1 O. C. D. 82].

A legislative committee on privileges and elections, of either house of the general assembly, may command a clerk of the courts to produce a poll book, and upon his refusal may commit him to jail for contempt: *Ex parte Dalton*, 44 O. S. 142.

This section contains some of the powers granted to the senate or house acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

1 Debates, 163, 228, 229; 2 Debates, 149, 150, 219, 220, 318, 560, 632, 664, 807, 831, 832, 857, 870.

SECTION 7. The mode of organizing the house of representatives, at the commencement of each regular session, shall be prescribed by law. (*See Const. 1802, Art. I, § 8.*)

Organization of house of representatives.

See Const. 1802, Art. I, § 8.

This is one of the sections in which power is granted the house to act separately (see obiter): *State, ex rel., v. Guilbert*, 75 O. S. 1.

2 Debates, 214, 215, 634, 664, 807, 832, 857, 870.

SECTION 8. Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers. (As amended September 3, 1912.)

Rules and right of punishment and expulsion. Investigation by each house of general assembly.

Vote: "Yes," 348,779; "No," 175,337.

Original § 8 read as follows: "Sec. 8. [Rules and right of punishment and expulsion. Investigation by each house of general assembly.] Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business. (See Const. 1802, Art. I, § 11.)"

This section is to be construed with § 4, of Art. II: *State, ex rel., v. Mason*, 61 O. S. 513.

This section defines power which the house and senate may exercise, acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

1 Debates, 163, 229; 2 Debates, 220, 240, 318, 560, 632, 664, 807, 832, 857, 870.

SECTION 9. Each house shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed in either house, without the concurrence of a majority of all the members elected thereto. (*See Const. 1802, Art. I, § 9.*)

Journal, and yeas and nays.

See Const. 1802, Art. I, § 9.

I. Cited.
II. Journals of each house as evidence.

III. Majority vote.

I. CITED.

State, ex rel., v. Jones, 22 O. C. C. 682, 11 O. C. D. 496 [reversed, *Platt v. Craig*, 66 O. S. 75].

Referred to as a section which conveys powers granted to the senate or house, acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

Art.II, § 9. CONSTITUTION OF THE STATE OF OHIO OF 1851.

II. JOURNALS OF EACH HOUSE AS EVIDENCE.

Where the journal of each house of the general assembly shows that a law received the concurrence of the number of members required by the constitution for its adoption and that it was publicly signed in the presence of each house by its presiding officer, as required by Art. II, § 17, of the constitution, its authenticity can not be impeached by parol evidence that one or more of the members in either house, recorded as concurring in its adoption, had prior thereto, been seated upon the determination of a contested election, by less than a constitutional quorum, although the concurrence of such member or members was necessary to the number of votes required by the constitution for the passage of the law: *State, ex rel., v. Smith*, 44 O. S. 348.

The legislative journals furnish the appropriate evidence on the question whether a bill has been passed by the requisite number of votes. Were we to hold otherwise we would in effect hold that a bill might become a law without receiving the number of votes required by the constitution; that a single presiding officer might by his signature, give the force of law to a bill which the journal of the body over which he presides, and which is kept under the supervision of the whole body, shows not to have been voted for by the constitutional number of members. The plain provisions of the constitution are not to be thus nullified, and the evidence which it requires to be kept under the supervision of the collective body must control when a question arises as to the due passage of a bill: *Fordyce v. Godman*, 20 O. S. 1.

The journals of each house are the best evidence: *State, ex rel., v. Price*, 8 O. C. C. 25, 4 O. C. D. 296.

Presumptions are every day made, to support the proceedings of the courts, far more liberal than would be a presumption that this so-called "new bill" was read on three days, and it is difficult to perceive why the proceedings of the assembly are not entitled to as much favor as the doings of the courts. The latter are as much bound as the former to keep a record or journal, and no one will pretend that legislative records should be more full and perfect than judicial. If a strict, literal, compliance with every constitutional requirement, however minute, is necessary to the validity of a law, and the courts are bound to hold that nothing was done but what appears in the legislative journals, it is easy to demonstrate that not a single statute enacted since the constitution took effect, can be upheld. It is nowhere stated in the journals that any reading of a bill was full and distinct, although the constitution requires that every reading shall be so. But surely this omission does not vitiate every act that has been passed, and make it the duty of the courts to hold them null and void. Everybody, I suppose, would admit that the reading being stated, the fullness and distinctness thereof may be presumed. If so, why may not three readings, and on different days, be presumed, when to do so contradicts nothing in the journal, but, on the contrary, is entirely consistent with it? In the case before us, the journal of April 13th, expressly stated that the bill in question was that day "read the third time" and passed. This imports that it had previously been read twice, and as the journal shows that it was considered on March 27th, when the amendment, called a "new bill," was reported, and again on the 7th and 12th of April, why may it not be presumed that there were two prior readings on two of these three days? *Miller v. State*, 3 O. S. 475. For the effect of the journal as evidence, see, also, *State, ex rel., v. Moffitt*, 5 O. 358.

For the purpose of determining whether or not a public act of the legislature received the two-thirds vote required by Art. IV, § 15, of the constitution, courts will take judicial notice of the vote by which such act was passed: *Backenstoe v. State*, 2 O. N. P. (N.S.) 178, 14 O. D. (N.P.) 580.

III. MAJORITY VOTE.

In the absence of all showing to the contrary, a law will be presumed to have been passed by the requisite number of votes: *Steamboat v. Millikin*, 7 O. S. 383.

No bill can become a law without receiving the number of votes required by the constitution, and if it were found by an inspection of the legislative journals, that what purports to be a law upon the statute book was not passed by the requisite number of votes, it might possibly be the duty of the courts to treat it as a nullity. But it does not follow that an act that was passed by a constitutional majority is invalid, because in its consideration the assembly did not strictly observe the mode of procedure prescribed by the constitution. There are provisions in that instrument that are directory in their character, the observance of which by the assembly is secured by their sense of duty and official oaths, and not by any supervisory power of the courts: *Miller v. State*, 3 O. S. 475; *Fordyce v. Godman*, 20 O. S. 1.

Under the constitution of Ohio, any enactment of law may be repealed by the concurrence of a majority, even though under the con-

stitution, the act so repealed was required to be and was passed by the concurrence of two-thirds of the members of each house: *Backenstoe v. Ohio*, 2 O. N. P. (N.S.) 178, 14 O. D. (N.P.) 584.

1 Debates, 163, 229, 230; 2 Debates, 150, 318, 560, 577, 632, 664, 807, 825, 832, 858, 870.

SECTION 10. Any member of either house shall have the right to protest against any act, or resolution thereof; and such protest, and the reasons therefor, shall, without alteration, commitment, or delay, be entered upon the journal. (*See Const. 1802, Art. I, § 10.*)

Right of members to protest.

See Const. 1802, Art. I, § 10.

1 Debates, 163, 230, 232; 2 Debates, 150, 214, 318, 560, 633, 664, 807, 832, 858, 870.

SECTION 11. All vacancies which may happen in either house shall, for the unexpired term, be filled by election, as shall be directed by law. (*See Const. 1802, Art. I, § 12.*)

Vacancies in either house, how filled.

See Const. 1802, Art. I, § 12.

Cited: *Harte v. Bode*, 4 O. N. P. 421, 7 O. D. (N.P.) 74.

1 Debates, 163, 232; 2 Debates, 318, 560, 633, 664, 807, 832, 858, 870.

SECTION 12. Senators and representatives, during the session of the general assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace; and for any speech, or debate, in either house, they shall not be questioned elsewhere. (*See Const. 1802, Art. I, § 13.*)

Privilege of members from arrest, and of speech.

See Const. 1802, Art. I, § 13.

A member of the general assembly is exempt from service of summons in a county other than that of his residence, during sessions of assembly and the time usually occupied in traveling to and from such sessions, where cause of action occurred ten days before opening of the session: *Walsh v. Mooney*, 13 O. C. C. (N.S.) 90.

1 Debates, 163, 232; 2 Debates, 318, 560, 633, 664, 807, 832, 858, 870.

SECTION 13. The proceedings of both houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy. (*See Const. 1802, Art. I, § 15.*)

When session to be public.

See Const. 1802, Art. I, § 15.

1 Debates, 163, 232, 233; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

SECTION 14. Neither house shall, without the consent of the other, adjourn for more than two days, Sundays excluded; nor to any other place than that, in which the two houses shall be in session. (*See Const. 1802, Art. I, § 15.*)

Power of adjournment.

See Const. 1802, Art. I, § 15.

1 Debates, 163, 233; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

In this section are found some of the powers granted to senate or house acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

SECTION 15. Bills may originate in either house; but may be altered, amended or rejected in the other. (*See Const. 1802, Art. I, § 16.*)

Where bills shall originate.

See Const. 1802, Art. I, § 16.

1 Debates, 163, 233; 2 Debates, 150, 318, 560, 633, 664, 807, 832, 858, 870.

In this section are found some of the powers granted to the senate or house acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

Art. II, § 16. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Bill to be read three times; not to contain more than one subject; acts revived or amended; veto by governor.

SECTION 16. Every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned to the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill. (As amended September 3, 1912.)

Vote: "Yes," 282,412; "No," 245,186.

Prior to the amendment given above § 16 had been amended. As amended November 3, 1903, it read: "Sec. 16. Every bill shall be fully and distinctly read three different days, unless in case of urgency three-fourths of the house in which it shall be pending, shall dispense with the rule. No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contain the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed.

"Every bill passed by both houses of the general assembly shall, before said bill can become a law, be presented to the governor. If he approves he shall sign said bill and thereupon said bill shall be law. If he object he shall not sign and shall return said bill, together with his objection thereto in writing, to the house wherein said bill originated, which house shall enter at large upon its journal said objection and shall proceed to reconsider said bill. If, after said reconsideration, at least two-thirds of the members-elect of that house vote to repass said bill it shall be sent, together with said objection, to the other house, which shall enter at large upon its journal said objection and shall proceed to reconsider said bill. If, after said reconsideration, at least two-thirds of the members-elect of that house vote to pass said bill it shall be law, otherwise it shall not be law. The votes for the repassage of said bill shall in each house respectively be no less than those given on the original passage. If any bill passed by both houses of the general assembly and presented to the governor is not signed and is not returned to the house wherein it originated and within ten

days after being so presented, exclusive of Sunday and the day said bill was presented, said bill shall be law as in like manner as if signed, unless final adjournment of the general assembly prevents such return, in which case shall be law, unless objected to by the governor and filed, together with his objection thereto in writing, by him in the office of the secretary of state within the prescribed ten days; and the secretary of state shall at once make public said fact and shall return said bill, together with said objection, upon the opening of the next following session of the general assembly, to the house wherein said bill originated, where it shall be treated in like manner as if returned within the prescribed ten days.

"If any bill passed by both houses of the general assembly and presented to the governor contains two or more sections, or two or more items of appropriation of money, he may object to one or more of said sections or to one or more of said items of appropriation of money, and approve the other portion of said bill, in which case said approved portion may be signed and then shall be law; and such section or sections, item or items of appropriation of money objected to shall be returned within the time and in the manner prescribed for, and shall be separately reconsidered as in the case of, a whole bill; but if final adjournment of the general assembly prevents such return the governor shall file said section or sections, item or items of appropriation of money, together with his objection thereto in writing, with the secretary of the state as in the case of a whole bill, and the secretary of state shall then make public said fact, but shall not further act as in the case of a whole bill. [As amended November 3, 1903; 95 v. 962.]"

See Const. 1802, Art. I, § 17.

The vote adopting this amendment was "Yes," 458,681; "No," 338,317.

For a proposed amendment of this section, see 98 v. 412.

Original § 16 read as follows: "Sec. 16. [Bills to be read three times; not to contain more than one subject; acts revived or amended.] Every bill shall be fully and distinctly read, on three different days, unless, in case of urgency, three-fourths of the house, in which it shall be pending, shall dispense with this rule. No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived, or amended, unless the new act contain the entire act revived, or the section or sections amended; and the section or sections so amended, shall be repealed."

I. Applied, cited, construed, referred to, etc.

II. Bill to be read three times.

III. Bill to contain no more than one subject which should be clearly expressed in its title.

A. Directory.

B. Compliance with provisions presumed.

C. Title as aiding in construction.

D. Act containing but one subject.

IV. Law revived or amended.

V. Amended section to be repealed.

VI. Presentation to governor.

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Canalboat Housatonic v. Salt Co., 7 O. S. 261; State, ex rel., v. Davis, 23 O. S. 434; Bloom v. Xenia, 32 O. S. 461; State, ex rel., v. Smith, 44 O. S. 364; Brady v. State, 59 O. S. 555; State, ex rel., v. Coon, 4 O. C. C. (N.S.) 560, 16 O. C. D. 241; Murray v. La Follette, 12 O. C. C. (N.S.) 113, 21 O. C. D. 247; State v. Gardner, 2 O. N. P. 405; 4 O. D. (N.P.) 34; Cincinnati v. Ferguson, 8 O. N. P. 361, 11 O. D. (N.P.) 101 [affirmed, without report, Ferguson v. Cincinnati, 65 O. S. 557]; Hall v. Siegrist, 13 O. D. (N.P.) 46; State v. Monheim, 14 O. D. (N.P.) 474.

II. BILL TO BE READ THREE TIMES.

This clause does not require that every amendment to a bill shall be read three times. It is directory only: Miller v. State, 3 O. S. 475.

III. BILL TO CONTAIN NO MORE THAN ONE SUBJECT WHICH SHOULD BE CLEARLY EXPRESSED IN ITS TITLE.

A. Directory. This provision was incorporated into the constitution for the purpose of making it a permanent rule of the houses, and to operate only on bills in their progress through the general assembly. It is directory only, and the supervision of its observance must be left to the general assembly: Pim v. Nicholson, 6 O. S. 176.

The provision that a bill shall contain no more than one subject is directory only: Seeley v. Thomas, 31 O. S. 301; State, ex rel., v. Mulhern, 74 O. S. 363; Weil v. State, 3 O. C. C. 657, 2 O. C. D. 382 [affirmed, Weil v. State, 46 O. S. 450]; Jones v. Commissioners, 2 O. C. C. (N.S.) 14, 15 O. C. D. 510; State, ex rel., v. Covington, 29 O. S. 102; see, also, Bloom v. Xenia, 32 O. S. 461.

Art.II, § 16. CONSTITUTION OF THE STATE OF OHIO OF 1851.

B. Compliance with provisions presumed. While this clause is directory only it will be presumed that the legislature complied therewith: *Newton v. Toledo*, 18 O. C. C. 756, 8 O. C. D. 607 [affirmed, without report, *Toledo v. Newton*, 52 O. S. 649].

Every reasonable intendment is to be made in favor of the proceedings of the legislature. It is not to be presumed that the assembly, or either house of it, has violated the constitution. When, therefore, it appears by the journals, that a bill was amended by striking out all after the enacting clause, and inserting a "new bill," so-called, it can not be presumed that the matter inserted was upon a different subject from that stricken out, especially when the matter inserted is consistent with the title borne by the bill before such amendment. This is the more obvious since the constitution provides that "no bill shall contain more than one subject, which shall be clearly expressed in its title." Nor does the fact that the inserted matter is called a "new bill" prove that it was not an amendment: *Miller v. State*, 3 O. S. 475.

C. Title as aiding in construction. A court may look to the title of a bill to determine the intention and object of the legislature in enacting the law: *Bronson v. Oberlin*, 41 O. S. 476; *State, ex rel., v. Kinney*, 20 O. C. C. 325, 11 O. C. D. 261; *Murray v. La Follette*, 12 O. C. C. (N.S.) 113, 21 O. C. D. 247; *State, ex rel., v. Ross*, 4 O. N. P. (N.S.) 377, 16 O. D. (N.P.) 704.

D. Act containing but one subject. The act to revise and consolidate the general statutes of the state embodied in the Revised Statutes is not void, as being in conflict with Art. II, § 16, of the constitution: *Oshe v. State*, 37 O. S. 494.

But a bill for the regulation of the health officers and other police officers of a city, contains but one subject within the meaning of this section: *Seeley v. Thomas*, 31 O. S. 301; *State, ex rel., v. Covington*, 29 O. S. 102.

The act passed May 24, 1885 (82 v. 238), entitled, "An act to regulate conditional rates and sales of personal property (G. C. §§ 8566 to 8570), etc., is not in conflict with Art. II, § 16, of the constitution: *Weil v. State*, 46 O. S. 450 [affirming *Weil v. State*, 3 O. C. C. 657, 2 O. C. D. 382].

IV. LAW REVIVED OR AMENDED.

"We understand the main objection to be, that in the new act, the sections of the prior statutes, which it is supposed to modify or amend, are not set out and recited in full. We think the phraseology, reasonably construed, does not require this to be done. As we understand this clause of the constitution, it requires, in the case of an amendment of a section or sections of a prior statute, that the new act shall contain, not the section or sections which it proposes to amend, but the section or sections in full, as it purports to amend them. That is, it requires, not a recital of the old section, but a full statement, in terms, of the new one. Such has been the almost uniform legislative construction given to this clause; and a different judicial construction would invalidate nine-tenths of the amendatory acts of state legislation passed since 1851. Whatever inference might be drawn from the debates in the constitutional convention, every provision of the constitution should be construed agreeably to the import of its terms, as they may be fairly presumed to have been understood by the people whose ratification alone gave validity to the whole instrument. This provision was intended, mainly, to prevent improvident legislation, and with that view, as well as for the purpose of making all acts, when amended, intelligible, without an examination of the statute as it stood prior to the amendment, it requires every section which is intended to supersede a former one to be fully set out. No amendments are to be made by directing specified words or clauses to be stricken from, or inserted in, a section of a prior statute which may be referred to; but the new act must contain the section as amended": *Lehman v. McBride*, 15 O. S. 573.

A statute does not conflict with this section which is not an amendment of a particular statute, but is itself a distinct and independent statute, and is an amendment only as being an amendment of the law generally: *Rairden v. Holden*, 15 O. S. 207.

The act of February 21, 1867 (64 v. 18), authorizing building associations to become incorporated, as provided in certain sections of the "act to provide for the creation and regulation of incorporated companies, passed May 1, 1852," has reference to the sections named which were then in force, and not the original sections which had been repealed: *Building Association v. Gallagher*, 25 O. S. 208.

V. AMENDED SECTION TO BE REPEALED.

This clause is directory only to the general assembly, and was not intended to abrogate the long established rule as to repeals by implication: *Lehman v. McBride*, 15 O. S. 573; *Chillicothe v. Fuel Co.*, 8 O. N. P. 88, 11 O. D. (N.P.) 24.

The rule that repeals by implication are not favored, is applicable to the inquiry whether any particular enactment ceased to be in force on account of repugnancy to the new constitution: *State, ex rel., v. Dudley*, 1 O. S. 437 [approved, *Cass v. Dillon*, 2 O. S. 607].

Repeals by implication are not favored: *Brown v. Van Wert*, 4 O. C. C. 407, 2 O. C. D. 622 [reversed on other grounds, *Van Wert v. Brown*, 47 O. S. 477].

A repealing clause of an unconstitutional statute is itself invalid, unless it appears formatively that the legislature intended such repealing clause to take effect irrespective of the validity of the remaining provisions of the statute: *State v. Monheim*, 14 O. D. (N.P.) 474; *Whitney v. Gill*, 15 O. C. C. 648, 8 O. C. D. 450.

VI. PRESENTATION TO GOVERNOR.

An entry in a record which is kept in the office of the governor pursuant to a requirement of law and with his acquiescence used to perpetuate evidence of the presentation to him of bills, which have been passed by both houses of the general assembly, the entry being made by a subordinate of the governor in the discharge of duties prescribed by him and showing the presentation of an identified bill on a day named, is competent and sufficient to prove such presentation: *Wrede v. Richardson*, 77 O. S. 182 [affirming *Wrede v. Richardson*, 5 O. N. P. (N.S.) 127, 18 O. D. (N.P.) 793, 1 *Hosea*, 494, 5 O. L. R. 405].

The enactment of an officially promulgated statute can not be impeached by parol evidence: *Wrede v. Richardson*, 77 O. S. 182 [affirming *Wrede v. Richardson*, 5 O. N. P. (N.S.) 127, 18 O. D. (N.P.) 793, 1 *Hosea*, 494, 5 O. L. R. 405].

The governor not having relinquished the duties of his office in view of a disability recognized by him, and there being no authorized procedure to ascertain that a disability has intervened, it is not competent upon an issue as to the valid enactment of a statute to show that upon the day of its presentation to him, and for ten days thereafter, he was, by reason of illness, disabled to receive or consider it so as to give effect to the provision of the fifteenth section of the third article of the constitution that in case of the disability of the governor, the duties of his office shall devolve upon the lieutenant-governor: *Wrede v. Richardson*, 77 O. S. 182 [affirming *Wrede v. Richardson*, 5 O. N. P. (N.S.) 127, 18 O. D. (N.P.) 793, 1 *Hosea*, 494, 5 O. L. R. 405].

1 *Debates*, 163, 232, 297; 2 *Debates*, 150, 151, 318, 560, 561, 633, 664, 807, 825, 832, 858, 870.

SECTION 17. The presiding officer of each house shall sign, publicly in the presence of the house over which he presides, while the same is in session, and capable of transacting business, all bills and joint resolutions passed by the general assembly. (*See Const. 1802, Art. I, § 17.*)

To be signed
by presiding of-
ficers.

See *Const. 1802, Art. I, § 17.*

Cited: *State, ex rel., v. Jones*, 22 O. C. C. 682, 11 O. C. D. 496 [reversed in *Platt v. Craig*, 66 O. S. 75].

In this section are found some of the powers granted to the senate or house, acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

Where the journal of each house of the general assembly shows that a law received the concurrence of the number of members required by the constitution for its adoption, and that it was publicly signed in the presence of each house by its presiding officer, as required by Art. II, § 17, of the constitution, its authenticity can not be impeached by parol evidence that one or more of the members in either house, recorded as concurring in its adoption, had, prior thereto, been seated, upon the determination of a contested election, by less than a constitutional quorum, although the concurrence of such member, or members, was necessary to the number of votes required by the constitution for the passage of the law: *State, ex rel., v. Smith*, 44 O. S. 348.

A bill passed by the general assembly, but not authenticated in accordance with the provisions hereof, does not become a law: *State v. Kiesewetter*, 45 O. S. 254.

Under the constitution of this state and the joint rules and practice of the general assembly, a bill which provides that it shall be in force from and after its passage, becomes a law and takes effect when it has received the requisite number of votes of the members elected to each house, and is signed by the presiding officer of each house: *State, ex rel., v. O'Brien*, 47 O. S. 464.

1 *Debates*, 293; 2 *Debates*, 182, 318, 634, 664, 807, 832, 858, 870.

Art.II, § 18. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Style of laws.

SECTION 18. The style of the laws of this state shall be, "*Be it enacted by the General Assembly of the State of Ohio.*" (See Const. 1802, Art. I, § 18.)

See Const. 1802, Art. I, § 18.

For proposed renumbering of this section and new § 18, see 98 v. 412.

The statute law of the state can neither be repealed nor amended by a joint resolution of the general assembly; therefore, the joint resolution (92 Laws, 787) submitting the question of calling a constitutional convention to the electors of the state was held invalid: State, ex rel., v. Kinney, 56 O. S. 721.

1 Debates, 163, 171, 233; 2 Debates, 318, 561, 633, 664, 807, 832, 858, 870.

Exclusion from office.

SECTION 19. No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected. (See Const. 1802, Art. I, § 20.)

See Const. 1802, Art. I, § 20.

For proposed renumbering of this section, see 98 v. 412.

1 Debates, 163, 234-236; 2 Debates, 151, 318, 562, 563, 577, 633, 664, 807, 832, 858, 870.

Term of office, and compensation of officers in certain cases.

SECTION 20. The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

For proposed renumbering of this section, see 98 v. 412.

- I. Cited.
- II. Term and compensation.
- III. Who are officers.

- IV. Salary.
- A. Change in salary.
- B. Meaning of salary.

I. CITED.

Pearson v. Stephens, 13 O. C. C. 49, 7 O. C. D. 122 [reversed, Pearson v. Stephens, 56 O. S. 126]; Ward v. Board of Education, 21 O. C. C. 699, 11 O. C. D. 671; State, ex rel., v. Coughlan, 6 O. N. P. (N.S.) 101, 18 O. D. (N.P.) 289.

II. TERM AND COMPENSATION.

The case of a clerk of the court holding his office by appointment to fill a vacancy is one of the cases in which the constitution has not fixed the term of office, but has left that to be done by the legislature: State, ex rel., v. Neibling, 6 O. S. 40.

This section imposes no restraint on the power of the general assembly to extend the tenure of an officer beyond his term, and until his successor is qualified, in a case where the duration of such tenure is not limited by the constitution: State, ex rel., v. Howe, 25 O. S. 588.

III. WHO ARE OFFICERS.

The act of May 4, 1869 (66 O. L. 80), authorizing the court to appoint trustees to carry out the provisions of the act and to fix their compensation, is not in conflict with this provision. The trustees for whose appointment it provides are not public officers within the meaning of this provision: Walker v. Cincinnati, 21 O. S. 14.

This clause can not be regarded as comprehending more than such officers as may be created to aid in the permanent administration of the government. It can not include all the agencies which the general assembly may authorize municipal and other corporations to employ for local and temporary purposes: Walker v. Cincinnati, 21 O. S. 14.

The county surveyor is an officer within the meaning of this section: State, ex rel., v. Staley, 5 O. C. C. 602, 3 O. C. D. 294.

The services performed by the officers under G. C. § 5594 are without the scope of their official duties as such, and are not so "incident" or "germane" to the regular duties of the offices to which they have been elected as to make the provision for compensation in contravention of this section: Lewis v. State, ex rel., 21 O. C. C. 410, 11 O. C. D.

647 [affirming State, ex rel., v. Lewis, 8 O. N. P. 84, 10 O. D. (N.P.) 537].

An officer in the constitutional sense is one who is elected or appointed to the state office * * * his deputy assistants and employes are not "officers" within the meaning of the constitution, and the act changing the compensation of all officers from the fee system to a fixed salary is not unconstitutional as in violation of Art. II, § 20, which provides that the compensation of an officer shall not be changed during his term: Theobald v. State, ex rel., 10 O. C. C. (N.S.) 175, 20 O. C. D. 414.

The term "officer," as used in this section, does not refer to such officer as members of a board of school examiners or to officers of a municipal corporation, such as mayor, marshal, etc., but to those created, and whose salaries are fixed by the general assembly: State, ex rel., v. Board of Education, 21 O. C. C. 785, 12 O. C. D. 333.

General Code § 5580, et seq., and § 5595, et seq., providing for compensation for county commissioners for services in county boards of equalization, are not inconsistent with this section: State, ex rel., v. Coughlan, 6 O. N. P. (N.S.) 101, 18 O. D. (N.P.) 289.

The duty enjoined by this section in regard to fixing the compensation of officers, does not require the general assembly to fix the sum or amount which each officer is to receive, but only requires that it shall prescribe or fix the rule by which such compensation is to be determined: Cricket v. State, 18 O. S. 9.

The act of April 25, 1904 (97 O. L. 313, 314), entitled, "An act fixing the salaries of the county surveyors in various counties of the state," is repugnant to § 20, Art. II, of the constitution of Ohio, because the power conferred and the duty imposed by said act upon the judges of the court of common pleas to fix the salaries or compensation of county surveyors is purely a legislative power and duty and can not be delegated. Said act is therefore unconstitutional and void: State, ex rel., v. Rogers, 71 O. S. 203.

This section authorizes the general assembly to fix the compensation of all officers in cases not provided for by the constitution: State, ex rel., v. Commissioners, 13 O. D. (N.P.) 97.

IV. SALARY.

A. Change in salary. The increase of pay of a public officer during the term for which he is elected is unconstitutional: State, ex rel., v. Raine, 49 O. S. 580.

The constitutional inhibition against the increase or diminution of the salary of an officer during his existing term does not render it incompetent for him to accept compensation, fixed by the general assembly after he entered upon the discharge of the duties of his office and before the expiration of his term, where no compensation was theretofore provided: State, ex rel., v. Carlisle, 3 O. N. P. (N.S.) 544, 16 O. D. (N.P.) 263.

A provision for paying county officers as members of the county board of equalization (see G. C. § 5597) does not violate this provision: State, ex rel., v. Coughlan, 6 O. N. P. (N.S.) 101, 18 O. D. (N.P.) 289.

B. Meaning of salary. It is manifest from the change of expression in the two clauses of the section that the word "salary" was not used in a general sense, embracing any compensation fixed for an officer, but in its limited sense of an annual or periodical payment for services—a payment dependent upon the time, and not on the amount of the service rendered. Where the compensation is to be ascertained by a percentage on the amount of money received and disbursed, it is not a salary within the meaning of this section: Thompson v. Phillips, 12 O. S. 617.

The pay of a member of the board of legislation, fixed by a provision that "each member of the board who is present during the entire session of any regular meeting, and not otherwise, shall be entitled to receive five dollars for his attendance," is not "salary" within the meaning of this section, and such an officer's salary may be increased during his term: Gobrecht v. Cincinnati, 51 O. S. 68.

Compensation by means of fees received for services rendered is not salary within the meaning of this section; and the statute changing such compensation from fees to salary (see G. C. § 2977, et seq.), is not rendered invalid by this provision: Theobald v. State, ex rel., 10 O. C. C. (N.S.) 175, 20 O. C. D. 414.

The compensation of county commissioners provided by G. C. § 3001, being determined on the basis of the aggregate amount on the tax duplicate, is not a salary within the purview of this section: State, ex rel., v. Carlisle, 3 O. N. P. (N.S.) 544, 16 O. D. (N.P.) 263.

The compensation originally provided for auditors was not a salary within the meaning of this provision: State, ex rel., v. Commissioners, 13 O. D. (N.P.) 97.

Art.II, § 21. CONSTITUTION OF THE STATE OF OHIO OF 1851.

1 Debates, 163, 233, 234; 2 Debates, 151, 318, 561, 562, 577, 633, 663, 664, 807, 832, 858, 870.

Contested elections.

SECTION 21. The general assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted.

For proposed renumbering of this section, see 98 v. 412.

Cited: State, ex rel., v. Hawkins, 44 O. S. 98; State, ex rel., v. O'Brien, 47 O. S. 464.

Referred to in citing State, ex rel., v. Berry, 14 O. S. 315; State, ex rel., v. Dalton, 1 O. C. C. 161, 1 O. C. D. 82; Stearns v. Taylor, 1 O. N. P. 23, 1 O. D. (N.P.) 136.

A specific mode of contesting elections in this state having been provided by statute, according to this requirement of the constitution, that mode alone can be resorted to in exclusion of the common law mode of inquiry by proceedings in quo warranto. The statute which gives this special remedy and prescribes the mode of its exercise binds the state, as well as individuals: State, ex rel., v. Marlow, 15 O. S. 114 [referred to in State, ex rel., v. Harmon, 31 O. S. 250; State, ex rel., v. McLain, 58 O. S. 313; Holbrock v. Smedley, 79 O. S. 391].

The duty of making such provision is solemnly enjoined upon the legislature by the constitution: Dalton v. State, ex rel., 43 O. S. 652.

Under this section, the power conferred by G. C. § 4237 upon the council of a municipal corporation to determine the election of its own members is exclusive and can not be determined by a proceeding in quo warranto or in any other mode than as provided in this section: State, ex rel., v. Berry, 47 O. S. 232.

A legislature has power to make provision for the contesting of all elections: Fike v. State, 4 O. C. C. (N.S.) 81, 15 O. C. D. 554.

If no provision by statute is made for a contest of election of township officers, quo warranto lies to contest such election: State, ex rel., v. Conser, 5 O. C. C. (N.S.) 119, 14 O. C. D. 270.

Where there are conflicting certificates signed by the same officers of election, parol evidence may be received to impeach the accuracy of the tally sheets and to explain errors therein or in the certificates relating thereto: Smith v. Rauh, 14 O. C. C. (N.S.) 33 [affirmed, In re Contest, 84 O. S. 467].

In a contest of election under the Rose county option law, the court may go behind the face of the returns and inquire into the facts and correct mistakes: Smith v. Rauh, 14 O. C. C. (N.S.) 33 [affirmed, In re Contest, 84 O. S. 467].

2 Debates, 228, 318, 563, 564, 577, 633, 664, 807, 832, 858, 870.

Appropriations.

SECTION 22. No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years. (*See Const. 1802, Art. I, § 21.*)

For proposed renumbering of this section, see 98 v. 412.

See Const. 1802, Art. I, § 21.

Cited: State, ex rel., v. Board of Public Works, 36 O. S. 409.

No officer of the state can enter into any contract except in cases specified in the constitution, whereby the general assembly will, two years after, be bound to make appropriations, either for a particular object or a fixed amount; the power and the discretion, intact, to make appropriations, in general, devolving on each biennial general assembly and for the period of two years: State v. Medbery, 7 O. S. 522.

The sole power of making appropriations of the public revenue is vested in the general assembly. It is the setting apart and appropriating by law a specific amount of the revenue for the payment of liabilities which may accrue or have accrued. No claim against the state can be paid, no matter how just or how long it may have remained overdue, unless there has been a specific appropriation made by law to meet it. By virtue of this power of appropriation, the general assembly exercise their discretion in determining, not only what claims against or debts of the state shall be paid, but the amount of expenses which may be incurred. If they authorize expenses or debts to be incurred, without an appropriation to pay them, and the expenses are incurred, those expenses create a debt against the state, and it must remain such until payment under an appropriation afterward made. The general assembly usually, however, provide for the current expenses for a period not exceeding two years out of the incoming revenues, by making appropriations of a sufficient amount of money to pay the expenses during that period, and provide by law

for the raising of revenue sufficient to meet the appropriations. The discretion of each general assembly for the period of two years in respect to the amount of expenditures, except in some special cases relating to salaries, is without limit and without control; but each must provide revenue and set apart a sufficient amount by a law operative within the same two years to pay all expenses and claims: *State v. Medbery*, 7 O. S. 522.

Neither branch of the general assembly can alone appropriate money from the treasury; but where a fund is provided by law for the contingent expenses of either branch, the disbursement of the fund for such purpose is subject to the control of such branch. Hence, where a sum is allowed by the house of representatives for cleaning the hall occupied by that body, after its adjournment, the party rendering the service, in pursuance of the resolution, is entitled to be paid therefor out of the contingent fund previously paid for the use of the house: *State, ex rel., v. Oglevee*, 36 O. S. 324.

1 Debates, 163, 237, 297; 2 Debates, 151, 318, 564, 633, 664, 807, 832, 858, 870.

SECTION 23. The house of representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the senate; and the senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the senators. (*See Const. 1802, Art. I, § 23.*)

Impeachments;
how instituted
and conducted.

For proposed renumbering of this section, see 98 v. 412.

See Const. 1802, Art. I, § 23.

Cited: *State, ex rel., v. Hawkins*, 44 O. S. 98.

In this section are found some of the powers granted to the senate or house acting separately: *State, ex rel., v. Guilbert*, 75 O. S. 1.

1 Debates, 163, 298; 2 Debates, 151, 318, 566, 633, 664, 807, 832, 858, 870.

SECTION 24. The governor, judges, and all state officers, may be impeached for any misdemeanor in office; but judgment shall not extend further than removal from office, and disqualification to hold any office under the authority of this state. The party impeached, whether convicted or not, shall be liable to indictment, trial, and judgment, according to law. (*See Const. 1802, Art. I, § 24.*)

Who liable to
impeachment, and
punishment.

For proposed renumbering of this section, see 98 v. 412.

See Const. 1802, Art. I, § 24.

Referred to: *Predigested Food Co. v. McNeal*, 1 O. N. P. 266.

1 Debates, 163, 239-241; 2 Debates, 151, 318, 566, 589, 633, 664, 807, 832, 858, 870.

SECTION 25. All regular sessions of the general assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty-two. (*See Const. 1802, Art. I, § 25.*)

When session to
commence.

For proposed renumbering of this section, see 98 v. 412.

See Const. 1802, Art. I, § 25.

Cited: *State, ex rel., v. Maxfield*, 9 O. C. C. 26, 6 O. C. D. 11.

The doctrine relating to repeals and amendments by implication applies to constitutions and statutes, and it requires that earlier expressions yield when it is necessary to give effect to the latest expression of the intention of those whose intention is entitled to control: *State, ex rel., v. Creamer*, 83 O. S. 412.

The express provisions of the constitution of the state establish such relation between the election of state officers and the convening of the general assembly that since the seventeenth article, adopted in 1905, has expressly changed the date of the election from November of the odd numbered years to the same month of the even numbered years, the provision for the convening of the regular session of the

Art.II, § 26. CONSTITUTION OF THE STATE OF OHIO OF 1851.

general assembly, then elected, must be regarded as changed by implication from the first Monday of January in the even numbered years to the first Monday of the same month in the odd numbered years: State, ex rel., v. Creamer, 83 O. S. 412.

1 Debates, 163, 241-257; 2 Debates, 151-158, 161-164, 318, 566, 567, 581, 583, 633, 664, 807, 832, 858, 870.

What laws to have a uniform operation.

SECTION 26. All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

For a proposed renumbering of this section, see 98 v. 412.

- I. Applied, cited, construed, referred to, etc.**
- II. Laws of general nature to be of uniform operation.**
- III. Specific illustrations.**
 - A.** Municipal corporations.
 - B.** Counties.
 - C.** Townships.
 - D.** Schools.
 - E.** Roads.
 - F.** Elections.
 - G.** Intoxicating liquors.

- H.** Motor vehicles.
- I.** Fish and game laws.
- J.** License.
- K.** Fellow servant law.
- L.** Building and loan associations.
- M.** Penal statutes.
- N.** Jury.
- O.** Justice of the peace.
- P.** Local laws.
- IV. Approval of other authority.**

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Peck v. Weddell, 17 O. S. 271; Ex parte Van Hagen, 25 O. S. 426; State, ex rel., v. Mitchell, 31 O. S. 592; Springer v. Avondale, 35 O. S. 620; State v. Pugh, 43 O. S. 98; State, ex rel., v. Brennan, 49 O. S. 33; Railway v. Railway, 50 O. S. 603; State, ex rel., v. McCarty, 52 O. S. 363; State, ex rel., v. Guilbert, 56 O. S. 575; State, ex rel., v. Brown, 60 O. S. 462; Cincinnati v. Trustees, 66 O. S. 440; State, ex rel., v. Jones, 66 O. S. 453; Shoemaker v. Cincinnati, 68 O. S. 603; Thomas v. State, ex rel., 76 O. S. 341; Davies v. Investment Co., 76 O. S. 407; State, ex rel., v. The Board of Deputy State Supervisors of Elections, 80 O. S. 471; State, ex rel., v. Price, 8 O. C. C. 25, 4 O. C. D. 296; Longworth v. Cincinnati, 17 O. C. C. 15, 9 O. C. D. 744 [affirmed, without report, Cincinnati v. Longworth, 61 O. S. 659]; Mykrantz v. Building & Loan Association, 19 O. C. C. 51, 10 O. C. D. 250; State, ex rel., v. Railway, 1 O. C. C. (N.S.) 145, 14 O. C. D. 609 [affirmed, without report, State, ex rel., v. Railway, 73 O. S. 363]; Jones v. Commissioners, 2 O. C. C. (N.S.) 14, 15 O. C. D. 510; Carr v. Summit County, 2 O. C. C. (N.S.) 449, 14 O. C. D. 161; Price v. Toledo, 4 O. C. C. (N.S.) 57, 15 O. C. D. 617; Hattersly v. Waterville, 4 O. C. C. (N.S.) 242, 16 O. C. D. 226 [affirmed, without report, Hattersley v. Waterville, 74 O. S. 466]; State, ex rel., v. Railway, 1 O. C. C. (N.S.) 145, 14 O. C. D. 609 [affirmed, without report, State, ex rel., v. Railway, 73 O. S. 363]; Price v. Toledo, 4 O. C. C. (N.S.) 57, 15 O. C. D. 617; State, ex rel., v. Tooker, 5 O. N. P. 122, 6 O. D. (N.P.) 464; Ludlow v. Lewis, 6 O. N. P. 513, 9 O. D. (N.P.) 600; French v. Shirley, 7 O. N. P. 26, 9 O. D. (N.P.) 181; Bank v. Trustees, 13 O. D. (N.P.) 472; Jiha v. Barry, 3 O. N. P. (N.S.) 65, 16 O. D. (N.P.) 33; State, ex rel., v. Taylor, 3 O. N. P. (N.S.) 505, 16 O. D. (N.P.) 66; Burkhardt v. Cincinnati, 6 O. N. P. (N.S.) 17, 18 O. D. (N.P.) 450; Board of Education v. Sawyer, 7 O. N. P. (N.S.) 401, 19 O. D. (N.P.) 1; Smith v. Telegraph Co., 7 O. N. P. (N.S.) 609; State, ex rel., v. Wright, 9 O. N. P. (N.S.) 321; Rennehoff v. Mansfield, 2 O. D. (N.P.) 404; In re Brown, 9 O. D. (N.P.) 810; Horstman v. Railway, 12 O. D. (N.P.) 762; State, ex rel., v. Commissioners, 13 O. D. (N.P.) 97; Board of Education v. Sawyer, 7 O. N. P. (N.S.) 401, 19 O. D. (N.P.) 1; Smith v. Telegraph Co., 19 O. D. (N.P.) 537; State, ex rel., v. Wright, 20 O. D. (N.P.) 231; Shepard v. Barron, 194 U. S. 553, 3 O. L. R. 327, 14 O. F. D. 417; Loeb v. Trustees, 179 U. S. 472; Cincinnati v. Miller, 11 Dec. Rep. 788, 29 Bull. 364; Investment Co. v. Youngstown, 68 Fed. 452, 9 O. F. D. 13 [cited incorrectly as § 28 in 9 O. F. D. 13]; Greenville v. Demorest, 14 O. C. C. (N.S.) 113, 22 O. C. D. 544.

II. LAWS OF GENERAL NATURE TO BE OF UNIFORM OPERATION.

The act of March 7, 1835, to amend the act entitled, "an act for the more effectual punishment of certain offenses in the county of Hamilton" (Swan & Critchfield's Stat. 444), is not so in conflict with § 26, Art. II, of the present constitution of the state, as to be thereby abrogated. That section had, at the adoption of the constitution, only a prospective and not a retrospective effect upon legislation: Allbyer v. State, 10 O. S. 588.

This section of the constitution is mandatory and it renders invalid a statute in conflict therewith: *Falk, Ex parte*, 42 O. S. 638; *Slatmyer v. Springborn*, 5 O. C. C. (N.S.) 89, 16 O. C. D. 100.

Under this section the constitutionality of an act is determined by the nature of its subject-matter, its operation and effect, and not alone by its form: *Hixson v. Burson*, 54 O. S. 470.

A law of a general nature, which is in full force in every part of the state, complies with this section, requiring laws of a general nature to have a uniform operation throughout the state: *State, ex rel., v. Ferris*, 53 O. S. 314.

Whenever a law of a general nature, having a uniform operation throughout the state, can be made fully to cover and provide for any given subject-matter, the legislation as to such subject-matter must be by general laws, and local or special laws can not be constitutionally enacted as to such subject-matter: *State, ex rel., v. Spellmire*, 67 O. S. 77.

A statute which does not impose a burden to which other persons who are similarly situated are not liable, does not violate this provision: *Traction Co. v. Felix*, 5 O. C. C. (N.S.) 270, 15 O. C. D. 393.

The classification of all turnpike companies, adopted by the amendments to the act of March 16, 1865, are not unreasonable or arbitrary; and inasmuch as their provisions have a uniform operation upon all the individuals comprised in each class, they do not fall within the inhibition of § 26, Art. II, of the constitution: *State, ex rel., v. Turnpike Co.*, 37 O. S. 481.

A law providing for the commitment of a person over sixteen years of age to a workhouse, if there be one in such county, with a proviso as to commitment by a city, village or township other than the municipality containing the same, is valid: *Kimbleaweez v. State*, 51 O. S. 228.

A statute which provides that the state board of health may compel municipal corporations to install a sewage system except in municipal corporations on the Ohio river is one of uniform operation: *Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113, 22 O. C. D. 544].

A law requiring electric street cars other than trail cars to have screens for protection of motormen or gripmen, is valid: *State, ex rel., v. Nelson*, 52 O. S. 88.

The location and construction of public roads is a subject of a general nature: *State, ex rel., v. Commissioner*, 54 O. S. 333.

Highway bridges are subjects of a general nature, and as such, laws relating to them must have a uniform operation throughout the state: *State, ex rel., v. Davis*, 55 O. S. 15.

Section 5 of an act passed April 13, 1892 (89 O. L. 283), "To provide for the appointment of a board of equalization and assessment in cities of the second grade, of the first class," confers on the annual board of equalization created by the act, powers that substantially differ from those conferred upon all other annual boards of equalization in this state by the general statute upon that subject, and for that reason conflicts with this section of Art. II, of the constitution of this state, and is void: *Gaylord v. Hubbard*, 56 O. S. 25 [overruling *Gaylord v. Hubbard*, 12 O. C. C. 112, 5 O. C. D. 529].

A capacity of trust companies to act as executors or administrators is a subject of general nature; and a statute which authorizes such appointment in some counties of the state, but not in others, is invalid: *Schumacher v. McCallip*, 69 O. S. 500; see, also, *Bank v. Reinhard*, 13 O. D. (N.P.) 630.

A general inheritance tax law which taxes the right to inherit property or take it by devise is valid as far as this section of the constitution is concerned: *State, ex rel., v. Ferris*, 53 O. S. 314 [affirming *State, ex rel., v. Ferris*, 9 O. C. C. 298, 6 O. C. D. 158].

A statute which operates uniformly throughout the state as to all classes named therein has uniform operation, although the classes named may be relatively small: *State v. Nelson*, 52 O. S. 88 [citing and following *Cass v. Dillon*, 2 O. S. 607; *Lehman v. McBride*, 15 O. S. 573; *McGill v. State*, 34 O. S. 228; *Ex parte Falk*, 42 O. S. 638].

An inheritance tax law which exempts estates not exceeding \$20,000 in value and which imposes a tax upon large estates at a lower rate than upon small estates is not rendered invalid by this section, although it is in conflict with Art. I, § 2: *State, ex rel., v. Ferris*, 53 O. S. 314 [affirming *State, ex rel., v. Ferris*, 9 O. C. C. 298, 6 O. C. D. 158].

In *Davies v. State, ex rel.*, 6 O. C. C. (N.S.) 417, 17 O. C. D. 593, it was held that a statute which provided for payments to the worthy blind out of the county funds did not invalidate this section of the constitution. This case was reversed in *Lucas Co. v. State, ex rel.*, 75 O. S. 114, on the ground that such legislation was in violation of Art. I, § 19, of the Ohio constitution.

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A former statute which provided for the appointment of constables by the courts in certain cases was held not to violate this section: *State, ex rel., v. Sayre*, 12 O. C. C. (N.S.) 268, 21 O. C. D. 331.

The law changing the compensation of public officers from the fee system to a fixed salary is not unconstitutional as in violation of Art. II, § 26: *Theobald v. State, ex rel.*, 10 O. C. C. (N.S.) 175, 20 O. C. D. 414 [affirmed, without report, *Theobald v. State, ex rel.*, 78 O. S. 426].

A statute on the subject of chattel mortgages which applies equally to all mortgages throughout the state is valid as far as this constitutional provision is concerned, although it is applicable only to mortgages on household goods, wearing apparel or mechanics' tools (see G. C. § 8566): *Mahoney v. Kinney*, 5 O. N. P. 337, 7 O. D. (N.P.) 405.

An act which regulates electric railways is not by reason of such legislation rendered invalid by this provision (see G. C. § 9100, et seq.): *Dietz v. Traction Co.*, 4 O. N. P. 399, 6 O. D. (N.P.) 515.

A statute on the subject of county agricultural societies (G. C. § 9800) is not rendered invalid by this constitutional provision: *Commissioners v. Brown*, 1 O. N. P. (N.S.) 357, 14 O. D. (N.P.) 241.

General Code §§ 5599 to 5601, providing for a county board of revision, operates uniformly throughout the state: *Scarborough v. Gibson*, 1 O. N. P. (N.S.) 77, 13 O. D. (N.P.) 738.

A former statute which conferred jurisdiction upon the court of insolvency in counties where such courts existed and withdrew such jurisdiction from the courts of common pleas in such counties violates this section: *In re Brown*, 8 O. N. P. 397, 11 O. D. (N.P.) 610; *In re Roberge*, 18 O. C. C. 367 [affirmed, without report, *Meyer v. Dempsey*, 62 O. S. 637].

A special act for the relief of sureties on an official bond is not general in its nature and need not be uniform in its operation: *State v. Board of Education*, 38 O. S. 3.

This section does not render invalid the statute which creates the State Liability Board of Awards and confers powers thereon (G. C. § 1465-37, et seq.; 102 v. 525); *State, ex rel., v. Creamer*, 85 O. S. 349.

The statutes creating the railroad commission G. C. § 487, et seq. are valid and constitutional: *Railway v. Railroad Commission*, 21 O. D. (N.P.) 468.

III. SPECIFIC ILLUSTRATIONS.

A. Municipal corporations. The original holding of the supreme court was that cities might be classified according to population and special provisions made with reference to cities of the respective grades and classes, even if the classification was extended so far that every large city of the state was in a separate grade and class: *Marmet v. State*, 45 O. S. 63; *Bonebrake v. Wall*, 24 Bull. 175; *State, ex rel., v. Brewster*, 39 O. S. 653; *State, ex rel., v. Hawkins*, 44 O. S. 98; *State, ex rel., v. Hudson*, 44 O. S. 137; *State, ex rel., v. Toledo*, 48 O. S. 112; *State, ex rel., v. Cincinnati*, 52 O. S. 419.

The correctness of this view was occasionally doubted, but the validity of such classification was sustained under the doctrine of *stare decisis*, *State, ex rel., v. Wall*, 47 O. S. 499; the court readily seized upon any events of intention to enact special legislation as a basis for refusing to recognize particular statutes based on such theory of classification: *State v. Pugh*, 43 O. S. 98; *Costello v. Wyoming*, 49 O. S. 202; *State, ex rel., v. Covington*, 29 O. S. 102; *State, ex rel., v. Smith*, 48 O. S. 211.

Statutes which related to cities of certain classes having certain population at specified dates were regarded as special legislation: *State, ex rel., v. Covington*, 29 O. S. 102; *State, ex rel., v. Mitchell*, 31 O. S. 592; *State, ex rel., v. Anderson*, 44 O. S. 247; *State, ex rel., v. Schwab*, 49 O. S. 229.

Very narrow limits of population were regarded as showing an intent to enact special legislation: *Kenton v. State, ex rel.*, 52 O. S. 59.

For a statute held unconstitutional as providing a certain method of organization of cities within narrow limits of population, see *State v. Gardner*, 2 O. N. P. 405, 4 O. D. (N.P.) 34; *State, ex rel., v. Mt. Vernon*, 4 O. N. P. (N.S.) 317, 16 O. D. (N.P.) 751 [affirmed, without report, *Mt. Vernon v. State, ex rel.*, 71 O. S. 428].

For a statute applicable to cities of the third grade, of the first class, see *Railway v. Railway*, 50 O. S. 603 [affirming *Railway v. Railway*, 6 O. C. C. 362, 3 O. C. D. 493].

Statutes general in character which were made to apply to cities of certain grades and classes were held to be unconstitutional: *State, ex rel., v. Bargus*, 53 O. S. 94; *Gaylord v. Hubbard*, 56 O. S. 25; *Cincinnati v. Steinkamp*, 54 O. S. 284; *Silverman v. Hay*, 59 O. S. 582.

Finally, the entire system of classification as it then existed was held to be unconstitutional: *State, ex rel., v. Jones*, 66 O. S. 453; *State, ex rel., v. Beacon*, 66 O. S. 491.

Municipal code (96 v. 20; G. C. § 3497, et seq.), which provided for the organization of cities and villages, was a general statute having uniform operation throughout the state: *Zumstein v. Mullen*, 67 O. S. 382.

An act requiring all buildings save private residences in any city of first class, first grade, of three or more stories in height, to be provided with suitable fire escapes, etc., is an act of a general nature, and void: *Cincinnati v. Steinkamp*, 54 O. S. 284.

A law regulating "the construction of buildings within any city of the first grade, of the first class," by permitting excavations to a certain depth, is a law of a general nature and must have a uniform operation throughout the state: *Emery, et al., v. Coles*, 5 O. N. P. 199, 7 O. D. (N.P.) 414.

General Code § 3782, regulating excavations below an established grade is not repugnant to this section: *Arnold v. Coal Co.*, 7 O. D. (N.P.) 414, 5 O. N. P. 329.

A law permitting lot owners in cities of the first grade of the first class to excavate a certain depth when building, without being liable to adjoining lot owners, is invalid: *Hall v. Kleeman*, 4 O. N. P. 201, 6 O. D. (N.P.) 323.

General Code § 4925, et seq., which requires the registration of voters in cities of a certain population is not invalid by reason of this section: *Gentsch v. State, ex rel.*, 71 O. S. 151.

A law authorizing cities of the first class first grade to build waterworks was held to be valid: *Ampt v. Cincinnati*, 12 O. C. C. 119 [affirmed, *Ampt v. Cincinnati*, 56 O. S. 47].

A statute which provided that the board of administration in cities of the first grade and the first class should have power to improve alleys of a certain width was held to be valid: *Longworth v. Cincinnati*, 17 O. C. C. 15, 9 O. C. D. 744.

This section was said to render invalid a statute on the subject of primary election which was applicable only to counties containing cities of the first grade of the first class; that was Hamilton county: *Cincinnati v. Ehrman*, 6 O. N. P. 169, 9 O. D. (N.P.) 1.

A statute (R. S. § 2328a) providing for sidewalks in any village in which sidewalks have not been built, in any county containing a city of the first grade, of the first class, was held to be void: *Costello v. Wyoming*, 49 O. S. 202.

Section 2271, Revised Statutes, which limited the amount of a tax or assessment for an improvement in cities of the first grade, of the first class, was held not to contravene this section: *Cincinnati v. Conner*, 55 O. S. 82.

The erection of an armory for the use of the national guard is a general purpose of the state, and taxes to be devoted to that purpose must, in obedience to the requirement of § 2, of Art. XII, of the constitution, be levied by a uniform rule upon all the taxable property within the state: *Hubbard v. Fitzsimmons*, 57 O. S. 436.

A statute to establish a park commission in a city of the second grade, of the first class, was held to be invalid in State, ex rel., v. *Cowles*, 64 O. S. 162.

An act authorizing the improvement of alleys in cities of the first grade, first class, and providing for the assessing of corner lots by the abutting feet, is constitutional: *Emery v. Cincinnati*, 4 O. N. P. 220, 6 O. D. (N.P.) 411.

The act of the general assembly (94 O. L. 175) supplemented Revised Statutes, § 2835, which provided "That any city of the third grade of the first class, may, subject to the provisions herein contained, construct, reconstruct, enlarge or repair a bridge or bridges across any navigable river or rivers, passing into or through such city," etc., was a special act applying only to the city of Toledo. Said act conferred corporate powers and was in conflict with Art. XIII, § 1, of the constitution of Ohio. The said act being legislation upon a subject-matter of general nature, and being local in its operation, and it not appearing that any such local and temporary emergency exists as to justify and require special legislation, the act was in conflict with Art. II, § 26, of the constitution of Ohio: *Platt v. Craig*, 66 O. S. 75 [reversed, *Walbridge v. Jones*, 22 O. C. C. 682, 11 O. C. D. 496].

For other statutes with reference to improvements in cities of certain grades and classes which were held valid in accordance with the original view of the supreme court, see *Smith v. Cincinnati*, 6 O. N. P. 175, 9 O. D. (N.P.) 806; *Sheer v. Cincinnati*, 6 Dec. Rep. 1233, 14 Am. L. Rec. 111; *Emery v. Cincinnati*, 4 O. N. P. 220, 6 O. D. (N.P.) 411.

The act of March 26, 1890, as amended by act of March 7, 1892 (89 v. 66), authorizing county commissioners in cities of the first grade, of the second class to improve streets or roads, etc., contravened this section: *Commissioners v. Savings Institution*, 119 Fed. 36, 55 C. C. A. 614, 15 O. F. D. 33.

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The provisions of the act of April 16, 1883 (80 v. 129), as amended March 25, 1884 (81 v. 78), which required that, in cities of the first grade, of the first class, each proprietor or lessee of a theater, etc., and all keepers or owners of livery stables, etc.; every dealer in secondhand articles, etc., shall pay a license, as herein provided, were held not to be in conflict with § 26, Art. II, of the constitution: *Marmet v. State*, 45 O. S. 63.

A statute imposing a license upon dogs in cities of the first grade, of the first class, was held to be unconstitutional in *Fagin v. Humane Society*, 6 O. N. P. 357, 9 O. D. (N.P.) 341.

A temporary act may be either general or special; and an act of a general nature which operates uniformly throughout the state and upon every individual corporation of the classes therein defined, but which is by its terms limited in operation to a specified period of time, is a temporary general statute: *Railway v. Horstman*, 72 O. S. 93 [reversing *Horstman v. Railway*, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670; *Horstman v. Railway*, 12 O. D. (N.P.) 756, and *Horstman v. Railway*, 14 O. D. (N.P.) 545].

The act of the general assembly, entitled, "An act to amend and supplement §§ 2505a and 2505b of the Revised Statutes of Ohio, as enacted May 1, 1891, and amended April 18, 1892," passed April 22, 1896 (92 O. L. 277), is constitutional, it being a law of a general nature which operates uniformly throughout the state and upon every individual corporation of the classes therein defined: *Railway v. Horstman*, 72 O. S. 93 [reversing *Horstman v. Railway*, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670; *Horstman v. Railway*, 12 O. D. (N.P.) 756, and *Horstman v. Railway*, 14 O. D. (N.P.) 545].

"If it be true, as argued by the defendant in error and as held by the court below, that it is possible that some street railway companies may be excluded from the class, § 26, of Art. II, of the constitution would not thereby be violated. This was the precise point decided in *State v. Nelson*, 52 O. S. 88. In that case it was remarked in the opinion: 'Of late years an effort has frequently been made to claim for this section of the constitution a wider scope than to guard against the evils resulting from legislation of the character mentioned by Thurman, J., in *Cass v. Dillon*; Scott, J., in *Lehman v. McBride*; Boynton, J., in *McGill v. State*, and Okey, J., in *Falk*, Ex parte, but such efforts have uniformly failed. The only statutes which have been declared in conflict with this section of the constitution are statutes making different classes of different parts of the territory of the state, such as cities, villages,' etc. That remark is just as true now as it was when it was made, a little more than ten years ago. The proposition that because some individuals were not included in a class defined in a law of a general nature, the law was for that reason repugnant to § 26, of Art. II, of the constitution, was distinctly advanced in *Senior v. Ratterman*, 44 O. S. 661, and was denied by the court, both in the syllabus and at length in the opinion by Spear, J. It was there held that the constitutional rule of uniformity of operation throughout the state was not violated, notwithstanding the contention of counsel that 'the uniformity of operation required applies as well to individuals and occupations as to geographical limits.' The law then under consideration was of a general nature, but did not operate alike on all liquor dealers. The court said: 'The principle of uniform operation requires simply that the law shall bear equally in its burden upon persons standing in the same category. * * * We are not prepared to say that the classification is not warranted.' It was truly and forcibly said by Burket, J., in *State, ex rel., v. Spellmire*, 67 O. S. 77, that 'when a law is available in every part of the state as to all persons and things in the same condition or category, it is of uniform operation throughout the state.' See, also, *Platt v. Craig*, 66 O. S. 75, at page 79. This act, as we have already said, operates throughout the state upon every municipal corporation therein, and upon every street railway corporation or company of the class defined; and therefore it is not in conflict with § 26, of Art. II, of the constitution": *Railway v. Horstman*, 72 O. S. 93 [reversing *Horstman v. Railway*, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670; *Horstman v. Railway*, 12 O. D. (N.P.) 756, and *Horstman v. Railway*, 14 O. D. (N.P.) 545].

Laws relating to grants of street railway franchises and routes established by municipalities must have uniform operation throughout the state: *Railway v. Railway*, 5 O. C. C. (N.S.) 583, 16 O. C. D. 180 [affirmed, without report, *Railway v. Railway*, 73 O. S. 364].

Where a statute on the subject of street railways which excepted certain cities from its provisions was valid was discussed, but not decided in *Hattersly v. Waterville*, 4 O. C. C. (N.S.) 242, 16 O. C. D. 226.

An act that merely detaches from a municipal corporation part of its territory and attaches it to an adjoining township does not contravene this section: *Metcalf v. State, ex rel.*, 49 O. S. 586.

An act authorizing cities of the first grade, of the first class, to annex contiguous territory was held to be valid: *State, ex rel., v. Cincinnati*, 52 O. S. 419.

A statute which applied to any city of the first class having a population of less than one hundred thousand inhabitants at the last federal census was held to be of uniform operation throughout the state: *Welker v. Potter*, 18 O. S. 85.

The act of April 3, 1885 (82 v. 101), which provided for a police force in "cities of the first grade, of the first class," was held not to be in conflict with this section: *State, ex rel., v. Hudson*, 44 O. S. 137; see *Heck v. State*, 44 O. S. 536.

A law authorizing a city of the third grade, first class, to borrow money, and issue bonds for natural gas purposes is valid: *State, ex rel., v. Toledo*, 48 O. S. 112.

A law which applies to only one city of a class and grade, and can never apply to any other as by requiring the action of its superior court and which confers corporate power is void: *State, ex rel., v. Smith*, 48 O. S. 211.

An act authorizing a justice of the peace in a city of the second grade, first class, to maintain a civil action to collect fees under G. C. §§ 13427 and 13428, the fees when collected to be turned over to the city treasurer, is local and not in violation of this section: *Hart v. Murray*, 48 O. S. 605.

An act to redistrict cities of the fourth grade, of the second class, is void: *Kenton v. State, ex rel.*, 52 O. S. 59.

When an act of the general assembly, required to have uniform operation throughout the state expressly excepts from its operation one or more cities or counties, such act by reason of such exception is unconstitutional and void: *State, ex rel., v. Buckley*, 60 O. S. 273.

A crematory law, applying to all cities of the second grade, second class, present and future, is valid: *Seifert v. Weidner*, 12 O. C. C. 1, 5 O. C. D. 506 [affirmed, *Seifert v. Weidner*, 35 Bull. 399].

An act to prescribe the purposes for which water rents may be assessed and collected in cities of first grade, first class, is valid: *Ampt v. Cincinnati*, 12 O. C. C. 119, 5 O. C. D. 356 [cited and affirmed, *Alter v. Cincinnati*, 56 O. S. 47].

A statute which provided for the appointment of building inspectors by mayors of cities of the first grade, of the first class, was held to be unconstitutional: *State, ex rel., v. Tooker*, 16 O. C. C. 647, 8 O. C. D. 656.

The provision of § 216, of the municipal code, "That any person hereinafter appointed pursuant to the act 'an act relating to market-houses in cities of second grade, of the first class, passed April 26, 1898 * * * shall continue to act for purposes for which he was appointed, contravened this section': *Slatmyer v. Springborn*, 5 O. C. C. (N.S.) 89, 16 O. C. D. 100 [affirmed, without report, *Slatmyer v. Springborn*, 72 O. S. 683].

Section 4105, as amended (94 O. L. 241), extending the provisions of §§ 4095 to 4104 to cities of the grade of Toledo, is not unconstitutional on the ground of special legislation nor for want of corporate power on the part of the municipality to receive and execute the trust: *State, ex rel., v. Toledo*, 3 O. C. C. (N.S.) 468, 13 O. C. D. 327.

Section 1765a (repealed, 96 v. 96), as of the duties of auditor of cities of the first grade, first class, contravened this section: *In re Daniel Brown*, 6 O. N. P. 178, 9 O. D. (N.P.) 810.

A statute which applied only to cities of the first grade, of the first class, which had an administrative board with powers granted prior to the enactment of such statute was held to be invalid: *Willen v. Cincinnati*, 12 O. D. (N.P.) 54.

A statute which created a city decennial board of revision was held not to violate this provision; since the area dealt with was a taxing district: *Scarborough v. Gibson*, 1 O. N. P. (N.S.) 77, 13 O. D. (N.P.) 738.

The curative provisions of the General Code were held to be of uniform operation and to be valid: *Columbus v. Heating & Lighting Co.*, 16 O. D. (N.P.) 311.

A Saturday half-holiday law for cities of 50,000 population or more, is invalid: *Diemer v. Hudson*, 37 Bull. 194.

A classification of municipal corporations for purposes of sewage disposal into those situated on the Ohio river and those not situated on the Ohio river, is valid: *Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113, 22 O. C. D. 544].

B. Counties. The act of the general assembly of April 9, 1856, "to restore to the court of common pleas the jurisdiction of minor offenses in certain counties in the state" (53 v. 107), being general in its nature, and yet limited in express terms to a part of the counties of the state, is in conflict with this provision. The courts of common pleas in Ohio being an organization of a general nature, and having by law jurisdiction over every citizen, the laws which relate to and regulate their jurisdiction and organization are laws of a general nature, and are imperatively required to have a uniform operation throughout the state: *Kelley v. State* (see Art. IV, § 8), 6 O. S. 269.

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A statute which provided for establishing a court of insolvency in a county containing a city of the second grade, first class, was held to be valid (see G. C. § 1620, et seq.): *State, ex rel., v. Bloch*, 65 O. S. 370.

A statute which gave the probate courts concurrent jurisdiction with the common pleas courts in certain counties with the right of appeal to the circuit court is invalid: *Wallace v. Leiter*, 76 O. S. 185.

A statute (R. S. § 6454) which gave to the probate court jurisdiction concurrent with the common pleas in criminal cases in certain counties was held not to be in violation of this section: *Oberer v. State*, 8 O. C. C. (N.S.) 93, 18 O. C. D. 620; *Serhaut v. Englebury*, 2 O. L. R. 512, 50 Bull. 68.

General Code §§ 10494 to 10496, which gives to the probate court of certain named counties jurisdiction concurrent with the common pleas court in certain named proceedings was held to be invalid in *Kislingbery v. Donovan*, 8 O. N. P. 476, 11 O. D. (N.P.) 535.

An act to require the county commissioners in any county having a population at the census of 1880 of 43,788, and containing a city of the second class, third grade, to provide a depository for the county funds, violates this section: *State, ex rel., v. Ellet*, 47 O. S. 90.

General Code §§ 2715 to 2745, providing for county depositories, does not contravene this section: *State, ex rel., v. Oviatt*, 4 O. N. P. (N.S.) 481, 17 O. D. (N.P.) 451.

A statute which provides one rule of compensation for county auditors who are in office when such statute is passed, and one rule for county auditors who come into office afterward is not in violation of this section: *Cricket v. State*, 18 O. S. 9.

A statute which provided for compensation of the county auditor of Hamilton county is unconstitutional by virtue of this section as being general in nature and not of uniform operation throughout the state: *State, ex rel., v. Lewis*, 69 O. S. 202 [overruling *State, ex rel., v. Judges*, 21 O. S. 1, and following *State, ex rel., v. Yates*, 66 O. S. 546].

The act "to limit the compensation of county officers in Holmes county," passed April 26, 1898 (93 O. L. 660), is a law of a general nature which does not operate uniformly throughout the state; and it is therefore in violation of the constitution, Art. II, § 26: *State, ex rel. Guilbert v. Yates*, 66 O. S. 546, approved and followed: *State, ex rel., v. Garver*, 66 O. S. 555; *State, ex rel., v. Yates*, 66 O. S. 546 [overruled, *Pearson v. Stephens*, 56 O. S. 126].

An act relating to the duties and compensation of certain county officers, in Miami county, is void: *Pearson v. Stephens*, 13 O. C. C. 49, 7 O. C. D. 122 [reversed in *Pearson v. Stephens*, 56 O. S. 126]: *Pearson v. Stephens*, 56 O. S. 126, was overruled in *State, ex rel., v. Yates*, 66 O. S. 546.

Revised Statutes § 1230b, providing for fees of sheriffs in certain counties is in violation of this section: *Childs v. Perry*, 5 O. C. C. (N.S.) 33, 16 O. C. D. 543.

Revised Statutes § 1297 (see G. C. § 3003), fixing salaries of prosecuting attorneys in different counties contravenes this section: *State, ex rel., v. Commissioners*, 7 O. C. C. (N.S.) 512, 18 O. C. D. 170.

A statute which provided for the fees and compensation of sheriffs in counties of 22,500 population or more was held to be invalid: *Ketter v. Commissioners*, 8 O. C. C. (N.S.) 73, 19 O. C. D. 149.

A statute which regulates the compensation of county officers in certain specified counties is in violation of this section: *State, ex rel., v. Yates*, 66 O. S. 546 [reversing *State, ex rel., v. Yates*, 21 O. C. C. 686, 12 O. C. D. 298]; *State, ex rel., v. Garver*, 66 O. S. 555 [reversing *State, ex rel., v. Garver*, 13 O. C. D. 140]; *Childs v. Perry*, 5 O. C. C. (N.S.) 33, 16 O. C. D. 543.

An act providing that the salaries of county officers shall be fixed under a rule based on population does not fail of uniform operation throughout the state: *Theobald v. State*, ex rel., 10 O. C. C. (N.S.) 175, 20 O. C. D. 414 [affirmed, without opinion, *Theobald v. State*, ex rel., 78 O. S. 426].

A statute which provides for a deputy coroner in counties which contain cities of the first class, of the second grade, is in violation of this section: *Wright v. Droege*, 12 O. C. C. (N.S.) 335, 21 O. C. D. 416.

A statute which defines powers and duties of county commissioners, but excepts Hamilton and Cuyahoga counties from the operations of provisions that relate to the employment of counsel was held to be valid in *Billings v. Dressler*, 5 O. N. P. 114, 7 O. D. (N.P.) 250.

It was originally held that a statute providing for the improvement of a road was local in its nature; and that accordingly a statute applicable to one county, only was valid since such a law need not be of uniform operation throughout the state: *State, ex rel., v. Commissioners*, 35 O. S. 458.

Subsequently the supreme court decided that the subject matter of public roads was of a general nature; and that a statute upon that subject must be uniform in operation throughout the state: *Mott v.*

Hubbard, 59 O. S. 199; Hixson v. Burson, 54 O. S. 470; State, ex rel., v. Davis, 55 O. S. 15.

An act authorizing county commissioners to improve a certain avenue and issue bonds to pay for such improvement is in violation of this section: State, ex rel., v. Bader, 12 O. C. C. 659, 5 O. C. D. 703.

General Code § 7405, authorizing purchase of toll roads by counties is not in conflict with this section: Ferris v. Commissioners, 9 O. C. C. (N.S.) 169, 19 O. C. D. 622.

The act of March 21, 1890 (91 O. L. 543), authorizing counties of certain population to issue bonds for road improvements was held not to contravene this section: Rees v. Olmstead, 135 Fed. 296, 68 C. C. A. 50, 14 O. F. D. 737.

The collection of taxes was originally held by the supreme court to be a matter of local and temporary nature; and a statute which provided for the appointment of a tax inquisitor in one or more counties of the state was held to be valid: State, ex rel., v. Cappellar, 39 O. S. 207; State, ex rel., v. Crites, 48 O. S. 142; State, ex rel., v. Lewis, 12 O. D. (N.P.) 46; see, also, State, ex rel., v. Gilfillan, 3 O. N. P. (N.S.) 153, 15 O. D. (N.P.) 756 [affirmed, State, ex rel., v. Gilfillan, 19 O. C. D. 709, 3 O. L. R. 476, modified, Thomas v. State, ex rel., 76 O. S. 341]; Gilbert v. Thomas, 16 O. D. (N.P.) 9 [following State, ex rel., v. Hagerly, 5 O. C. C. 325, 3 O. C. D. 161]; State, ex rel., v. Lewis, 4 O. N. P. (N.S.) 454, 17 O. D. (N.P.) 370, 1 Hosea, 21 [reversed, State, ex rel., v. Lewis, 74 O. S. 403]; State, ex rel., v. Morganthaler, 20 O. D. (N.P.) 76, 7 O. L. R. 105.

This view was subsequently abandoned; and it was held that such subject-matter was one of a general nature and that a statute providing for the employment of a tax inquisitor must be uniform throughout the state: State, ex rel., v. Lewis, 74 O. S. 403; State, ex rel., v. Gilfillan, 19 O. C. D. 709, 3 O. L. R. 476; for opinion in common pleas court, see State, ex rel., v. Gilfillan, 15 O. D. (N.P.) 756.

For retention of fees under an unconstitutional county officers' salary act, see State, ex rel., v. Vail, 84 O. S. 399.

A law preventing the refunding of taxes in counties containing a city of the first grade, of the first class, is void: Commissioners v. Rosche Bros., 50 O. S. 103.

A statute which authorizes the commissioners of Lucas county to levy taxes for certain purposes at a rate not to exceed five mills on the dollar was held to be a law of a general nature which did not have a uniform operation throughout the state and which was therefore unconstitutional: Pump v. Commissioners, 69 O. S. 448.

A statute which authorizes the county commissioners of certain counties to extend the time for any taxes at their discretion was held to be constitutional in State, ex rel., v. Madigan, Treasurer, 8 O. C. C. (N.S.) 553, 18 O. C. D. 673.

This case was, however, reversed in Madigan v. State, ex rel., 75 O. S. 602, on the ground that such statute was a general law not of uniform operation throughout the state.

A statute concerning the sale of lands forfeited for nonpayment of taxes in Hamilton county violates this section: Kattenhorn v. Dehner, 6 O. L. R. 610.

An act whereby the legislature attempts to exclude certain counties from its operation on account of certain trivial differences of population is void: State, ex rel., v. Bargus, 53 O. S. 94. (A statute applicable to counties except such as had a population of not less than 31,940 and not more than 31,960; and counties which had a population of not less than 35,400 and not more than 35,500.)

An act which provides for an annual board of equalization for Cuyahoga county, and confers upon it powers materially different from those possessed by the boards authorized by G. C. § 5580, et seq., contravenes this section: Gaylord v. Hubbard, 56 O. S. 25.

A scheme for the erection of such county buildings as may, by designated county officers and persons to be appointed to act with them be deemed necessary is a subject of general legislation; and an act providing therefor must, in view of the requirement of § 26, of Art. II, of the constitution, have a uniform operation throughout the state: State, ex rel., v. Brown, 60 O. S. 462.

A statute which exempted Cuyahoga and Franklin counties from the operation of the general statutes on the subject of the jurisdiction of justice of the peace was held to be unconstitutional: Oakmen v. Furniture Co., 10 O. C. C. (N.S.) 247, 20 O. C. D. 301.

Contra: Fisher v. Garey, 11 O. D. (N.P.) 796.

A statute which authorized Hamilton county to construct and furnish an armory for the Ohio national guard is invalid: State, ex rel., v. Gibson, 8 O. N. P. 367, 11 O. D. (N.P.) 90; see, also, Hubbard v. Fitzsimmons, 57 O. S. 436.

A statute on the subject of county agricultural societies which applies to but one county in the state is unconstitutional; but such

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unconstitutional provision may be rejected and the rest of the law given full effect: *Commissioners v. Brown*, 1 O. N. P. (N.S.) 357, 14 O. D. (N.P.) 241.

A statute applicable only to a city of the first grade, of the first class, which provided for the appointment of a director of public works in such city was held to be unconstitutional: *Ramsey v. Columbus*, 12 O. D. (N.P.) 725.

C. Townships. General Code § 5811, et seq., which authorizes county commissioners and township trustees to grant permission for certain animals to run at large is not unconstitutional under this section: *Fox v. Fox*, 24 O. S. 335.

Authorizing a certain township to use certain land for cemetery purposes is local: *Norton v. Trustees*, 8 O. C. C. 335, 4 O. C. D. 422 [affirmed, without report, *Paine v. Norton*, 54 O. S. 682].

The act of March 17, 1896, detaching territory from Perry and Bokescreek townships, Logan county, and creating a new township contravenes this section: *State, ex rel., v. Campbell*, 14 O. C. C. 481, 8 O. C. D. 62 [affirmed, without report, *Campbell v. State, ex rel.*, 56 O. S. 794].

An act (91 O. L. 803) authorizing trustees of Columbia township to construct sidewalks is repugnant to this section: *Andrews v. Settles*, 16 O. C. C. 638, 9 O. C. D. 191.

Under a constitutional provision like this, trustees of a particular township can not be given authority by the legislature to widen or extend a certain road in a prescribed manner: *Loeb v. Township*, 91 Fed. 37, 12 O. F. D. 349.

A statute which authorized the trustees of a certain named township to sell bonds to pay off the outstanding indebtedness (90 v. 291) was held to be valid: *Bank v. Trustees*, 98 Fed. 524, 13 O. F. D. 318.

D. Schools. Under this section it was originally held that laws relating to the organization and management of common schools must have uniform operation throughout the state and accordingly a statute which provided for the consolidation of two school districts named therein was held to be unconstitutional: *State v. Powers*, 38 O. S. 54.

This view was subsequently abandoned and it was held that the subject of dividing territory into school districts was in its nature local; but special legislation on such subject was not forbidden by this section; and that the formation of special school districts from territory within the limits of a township was not in conflict with this section: *State, ex rel., v. Shearer*, 46 O. S. 275 [overruling *State v. Powers*, 38 O. S. 54]; see, also, *State, ex rel., v. Board of Education*, 7 O. C. C. 152; *Mooney v. Bell*, 8 O. N. P. 685, 11 O. D. (N.P.) 786.

In turn this view was abandoned; and it was held that whenever a law of general nature having a uniform operation throughout the state, can be made fully to cover and provide for any given subject-matter, the legislation, as to such subject-matter, must be by general laws, and local or special laws can not be constitutionally enacted as to such subject-matter. The subject-matter of schools, including school districts, and establishing and changing the same, is of a general nature; and all legislation as to them must be general, having a uniform operation throughout the state: *State, ex rel., v. Shearer*, 46 O. S. 275, overruled, and *State v. Powers*, 38 O. S. 54, reaffirmed.

The act of April 2, 1902, entitled, "An act to create a special school district in Springfield and Sycamore townships, in Hamilton county, and Union township, Butler county" (95 O. L. 743), is in conflict with that part of § 26, Art. II, of the constitution, which provides that: "All laws of a general nature, shall have a uniform operation throughout the state," and is therefore unconstitutional and void: *State, ex rel., v. Spellmire*, 67 O. S. 77.

A statute which attempts to make valid special school districts which have been created by acts which were unconstitutional by reason of this section is itself unconstitutional: *Bartlett v. State*, 73 O. S. 54; *State, ex rel., v. Hickman*, 5 O. C. C. (N.S.) 175, 17 O. C. D. 216.

Laws relating to schools are of a general nature: *State, ex rel., v. Kurtz*, 21 O. C. C. 261, 11 O. C. D. 705.

An act (92 O. L. 683) to create a school-teachers' pension fund in cities of the third grade, first class, is in conflict with this section: *State, ex rel., v. Hubbard*, 22 O. C. C. 252, 12 O. C. D. 87 [affirmed, without report, *Hibbard v. State*, 65 O. S. 574].

That part of 99 v. 585, amending R. S. § 3897, which applied only to districts of cities having a population of more than 50,000 persons in which the number of members of the board of education was changed under the statute, was held to apply only to Cincinnati and to be unconstitutional: *State, ex rel., v. Withrow*, 11 O. C. C. (N.S.) 569, 21 O. C. D. 215.

A statute which forbade boards of education to make contracts unless the money was in the treasury except boards of education in

certain city school districts was held to be unconstitutional: *Bower v. Board of Education*, 8 O. C. C. (N.S.) 305, 18 O. C. D. 624.

General Code § 7735, which permitted children living more than a mile and one-half from the school to which they were assigned, to attend a nearer school was held to be unconstitutional as conferring a privilege upon certain children of school age and not upon others similarly situated: *Cincinnati School District v. Oakley Special School District No. 11*, 17 O. C. D. 824, 3 O. L. R. 116.

General Code § 7740, et seq., which provides for the examination of pupils of special districts, a township district, for a commencement, and for the payment of the tuition of pupils who receive diplomas for their attendance at high schools is uniform in its operation and is not rendered invalid by this section: *State, ex rel., v. Board of Education*, 11 O. D. (N.P.) 422.

E. Roads. Roads and highways are subjects of a general nature and statutes thereon must be uniform in operation throughout the state: *Thorniley v. State, ex rel.*, 81 O. S. 108; *State, ex rel., v. Davis*, 55 O. S. 15; *Hixson v. Burson*, 54 O. S. 470.

A statute applicable to one mile assessment pikes which makes a different provision for Franklin county from the provisions in force in the other counties of the state is invalid as to Franklin county: *Grove v. Leidy*, 9 O. C. C. 272, 6 O. C. D. 116 [affirmed, without report, *Leidy v. Grove*, 53 O. S. 662].

Statutes which provided for the control and management of roads in certain counties of the state and for a different control and management in other counties of the state are unconstitutional: *Thorniley v. State, ex rel.*, 81 O. S. 108.

F. Elections. A statute on the subject of boards of election which exempted therefrom certain cities was held to be invalid as of a general nature and not of uniform operation throughout the state: *State, ex rel., v. Buckley*, 60 O. S. 273 [affirming *State, ex rel., v. Buckley*, 17 O. C. C. 86, 9 O. C. D. 341].

The primary election laws (see G. C. § 4948, et seq.) are not rendered invalid by this section: *State, ex rel., v. Felton*, 77 O. S. 554; see, also, *State, ex rel., v. Poston*, 58 O. S. 620.

The existence of special statutes upon the subject of primary elections in certain counties does not render invalid general laws on the subject of primary elections applicable to all the counties of the state: *State, ex rel., v. Felton*, 77 O. S. 554; see, also, *State, ex rel., v. Poston*, 58 O. S. 620.

A statute on the subject of primary elections applicable to the cities of the first grade, of the first class, was held to be unconstitutional: *Cincinnati v. Ehrman*, 6 O. N. P. 169, 9 O. D. (N.P.) 1.

A statute which provided that the polls should close at 4:00 p. m. and in cities having a population of 300,000 or more is constitutional: *Gentsch v. State, ex rel.*, 71 O. S. 151.

This section does not render invalidate the statute which provides for a non-partisan judiciary ballot for the election of judges (G. C. §§ 5054-1, et seq.): *State, ex rel., v. Miller*, 87 O. S. —.

G. Intoxicating liquors. A law of the general assembly allowing municipalities to regulate or prohibit ale and porter shops (etc.), is not in contravention of this section: *Burckholter v. McConnellsville*, 20 O. S. 308.

The township local option act of March 3, 1888 (see G. C. § 6119, et seq.) is not in conflict with this section: *Gordon v. State*, 46 O. S. 607.

A statute which authorizes municipal corporations to regulate the sale of intoxicating liquor is not rendered invalid by this section: *Madden v. Smeltz*, 2 O. C. C. 168, 1 O. C. D. 424.

The statutes on the subject of local option in municipal corporations (see G. C. § 6127, et seq.) is not rendered invalid by this provision: *State, ex rel., v. Dollison*, 68 O. S. 688; *State, ex rel., v. Dollison*, 194 U. S. 445, 14 O. F. D. 380.

Statutes on the subject of local option in residence districts (see G. C. § 6140, et seq.) are not unconstitutional: *Columbus v. Jeffrey*, 11 O. N. P. 609, 2 O. N. P. (N.S.) 85, 14 O. D. (N.P.) 609.

Statutes on the subject of local option in counties (see G. C. § 6108, et seq.) are not unconstitutional: *Gassman v. Kerns*, 19 O. D. (N.P.) 317.

A statute which imposes a tax upon the business of traffic in intoxicating liquor (see G. C. § 6071, et seq.) is not unconstitutional: *State, ex rel., v. Frame*, 39 O. S. 399.

The legislature may in providing against evils resulting from the traffic in intoxicating liquors, levy a tax upon such forms of the traffic as, in its wisdom, may seem best without infringing upon the constitutional requirement, that all laws of a general nature shall be uniform in their operation throughout the state: *Adler v. Whitbeck*, 44 O. S. 539; see, also, *Senior v. Ratterman*, 44 O. S. 661.

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General Code § 13206, which forbids the sale of intoxicating liquors near county fairs is not rendered invalid by this section: *Heck v. State*, 44 O. S. 536.

An act passed April 12, 1876 (73 v. 321), to prevent gambling and the sale of intoxicating liquors "on or within a distance of two miles of Chippewa lake, in the county of Medina," is in contravention of this section, and is void: *State v. Winch*, 45 O. S. 663.

A law providing for the selling or giving of intoxicants within a mile and a half of the United States' soldiers' home, does not contravene this section: *Driggs v. State*, 52 O. S. 37.

The act of April 12, 1876 (73 v. 321), entitled, "an act to prevent gambling and the sale of intoxicating liquors at a place therein named," is in violation of § 26, Art. II, and is void: *Nye v. State*, 1 O. C. C. 355, 1 O. C. D. 198.

H. Motor vehicles. A statute which requires persons acquiring motor vehicles after its passage to procure licenses is invalid as not being uniform in its operation, since it does not apply to persons who had acquired motor vehicles before the statute was passed: *Feasel v. State*, 6 O. N. P. (N.S.) 321, 18 O. D. (N.P.) 478.

General Code § 6308, which provides that actions for injury to person or property caused by the negligence of an owner of an automobile may be brought in the county where the injured person resides is valid: *Allen v. Smith*, 84 O. S. 283.

Contra: *Hoblitt v. Gorman*, 8 O. N. P. (N.S.) 270, 19 O. D. (N.P.) 737.

I. Fish and game laws. An act requiring all persons engaged in fishing in Lake Erie (see G. C. § 1435, et seq.) to obtain a license is not repugnant to this section: *State v. Hanlon*, 77 O. S. 19; see, to the same effect, *State v. Owen & Owen*, 4 O. D. (N.P.) 163; *French v. Shirley*, 9 O. D. (N.P.) 181.

A statute which imposes a different license fee upon nets used from rowboats from that which is imposed upon the same nets used from steamboats was held to be unconstitutional: *Yensen v. State*, 7 O. N. P. 18, 9 O. D. (N.P.) 168.

J. License. That part of the act of April 21, 1896, entitled, "An act to promote the public health and regulate the sanitary construction of house-drainage and plumbing," which requires any plumber, whether master, or employing plumber, or journeyman, before engaging in the business, to undergo an examination as to fitness, and obtain a license, but permits all members of a firm to pursue the business where one only has procured such license, and all members of a corporation to pursue it where the manager only has procured such license, does not operate equally upon all of a class pursuing the calling under like circumstances, and is invalid: *State v. Gardner*, 58 O. S. 599.

A statute which provided that steam engines could be operated only by licensed engineers or by persons who had acted as steam engineers in Ohio for a period of three years prior to the enactment of such statute was held to be unconstitutional: *Harmon v. State*, ex rel., 66 O. S. 249 [affirming *State*, ex rel., v. *Harmon*, 3 O. C. C. (N.S.) 399, 13 O. C. D. 292].

General Code § 1047, et seq., providing for the examination and licensing of stationary steam engineers, is constitutional in that it prescribes that the rules and regulations for such examinations shall be uniform throughout the state: *Theobald v. State*, 20 O. C. D. 336.

K. Fellow servant law. General Code § 9016, known as the fellow servant law, does not contravene this section, because it applies to railroads only: *Froelich v. Railway*, 5 O. C. C. (N.S.) 6, 14 O. C. D. 259 [reversing *Froelich v. Railway*, 13 O. D. (N.P.) 107]; see, also, *Roe v. Railway*, 13 O. D. (N.P.) 260.

Contra: *Maltby v. Railway*, 13 O. D. (N.P.) 280.

L. Building and loan associations. General Code § 9650, which confers power on building and loan associations "to assess and collect from members and depositors, such dues, fines, interest and premium on loans made, or other assessments as may be provided for in the constitution and by-laws," and which further provides that "such dues, fines, premiums or other assessments shall not be deemed usury, although in excess of the legal rate of interest," is a valid enactment, and is not in conflict with § 26, of Art. II, nor with § 2, of Art. I, of the constitution of Ohio: *Cramer v. Trust Co.*, 72 O. S. 395; see, to the same effect, *Building & Loan Association v. Desnoyers*, 4 O. C. C. (N.S.) 337, 16 O. C. D. 352.

M. Penal statutes. Under the former constitution, laws having a general subject-matter, and, therefore, "of a general nature," were frequently limited expressly, in their operation, to one or more counties, to the exclusion of other portions of the state. As a consequence,

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on the same subject, there might be one law for Hamilton county, another for Franklin, and still a third for Ashtabula. This naturally led to improvident legislation, enacted by the votes of legislators who were indifferent in the premises, because their own immediate constituents were not to be affected by it. To arrest and, for the future, prevent this evil, the provision in question was inserted in the present constitution: *Lehman v. McBride*, 15 O. S. 573.

General Code § 13408, known as the tramp law, is not in conflict with this section: *State v. Hogan*, 63 O. S. 202.

General Code §§ 13376, 10062 to 10066, 10070 to 10072, and 13423 to 13440, relating to cruelty to animals, is not in conflict with this section: *Beamer v. State*, 21 O. C. C. 440, 12 O. C. D. 4.

General Code § 12474, providing the penalty for embezzlement by bank officers is not in conflict with this section: *In re Bachtel*, 11 O. C. C. (N.S.) 537, 21 O. C. D. 159.

The imprisonment or penalty clause of the Valentine anti-trust law is not in contravention of this section: *State v. Hygeia Ice Co.*, 4 O. N. P. (N.S.) 361, 16 O. D. (N.P.) 735.

That a corporation can not be punished by imprisonment does not impair the constitutionality of § 4, of Valentine anti-trust law, as being a discrimination in favor of corporations: *State v. Extinguisher Co.*, 20 O. D. (N.P.) 240.

A statute which provided a punishment for having burglar's tools in possession in a city of the first grade, of the first class, or within four miles thereof was held to be unconstitutional: *Falk, Ex parte*, 42 O. S. 638.

The act of March 7, 1835, to amend the act, entitled "An act for the more effectual punishment of certain offenses in the county of Hamilton" (S. & C. Stat., 444), is not in conflict with § 26, Art. II, of the present constitution of the state, as to be thereby abrogated. That section had, at the adoption of the constitution, only a prospective and not a retrospective effect upon legislation: *Allbyer v. State*, 10 O. S. 588.

N. Jury. A statute which provided a method for returning the names of electors in Cuyahoga county for jury service, was held not to be a law of a general nature and therefore constitutional: *McGill v. State*, 34 O. S. 228.

A statute which required a common pleas judge of the several subdivisions of the common pleas districts of the state, to appoint jury commissioners for the counties in their respective subdivisions, except certain named counties which were already provided by special statutes, with jury systems was held to be constitutional: *State v. Kendle*, 52 O. S. 346.

The right of trial by jury is a subject-matter of general legislation, and laws affecting it must be uniform in operation throughout the state: Section 26, Art. II, Constitution.

A statute, by the provisions of which the parties to a suit in which the issues are of right triable by jury are "deemed" to have waived the right, unless a certain time before the term at which the issues are, by the laws of the state, required, to be made up, a demand is made for a jury, attended with a "deposit" of a certain sum of money for the benefit of the jury fund, affects the right of trial by jury, and must be uniform in its operation. The Cuyahoga county jury law, adopted May 29, 1894 (91 Laws, 793), is, in substance, such a law, and being limited in its operation to Cuyahoga county, is invalid: *Silberman v. Hay*, 59 O. S. 582.

General Code § 11089, providing that in condemnation cases the jury fees shall be paid as a part of the costs by the corporation seeking to appropriate the land, imposes no burden upon one suitor or class of suitors from which others similarly situated are exempt, and is therefore not in conflict with § 26, of Art. II, of the Ohio constitution: *Traction Co. v. Felix*, 5 O. C. C. (N.S.) 270, 15 O. C. D. 393 [affirmed, without report, *Traction Co. v. Felix*, 72 O. S. 608].

Statutes which exempted certain counties from the operation of the general jury laws were held to be unconstitutional in *State v. Monheim*, 14 O. D. (N.P.) 474.

O. Justice of the peace. General Code § 10450, providing that judgments either before a justice of the peace or in the court of common pleas under the forcible entry and detainer chapter, "shall not be a bar to any further action brought by either party," is not class legislation: *Laver v. Canfield*, 7 O. C. C. (N.S.) 389, 18 O. C. D. 429.

A statute which excepts certain counties from the general statute, which makes the jurisdiction of a justice of the peace extend throughout the county for the purpose of attachment, was held to be unconstitutional: *Watkins v. Schlechter*, 7 O. N. P. 42, 9 O. D. (N.P.) 590.

P. Local laws. This section does not prevent the enactment of statutes which are not uniform throughout the state, if the subject-

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matter is local in character; since such law is not of a general nature: State, ex rel., v. Commissioners, 35 O. S. 458; State, ex rel., v. Hoffman, 35 O. S. 435; State, ex rel., v. Shearer, 46 O. S. 275; State, ex rel., v. Craig, 22 O. C. C. 441, 12 O. C. D. 351; Cincinnati v. Ferguson, 12 O. D. (N.P.) 439 [affirmed, without report, Cincinnati v. Ferguson, 66 O. S. 658].

In such cases the difficulty is in determining what is a law of a general nature. (See cases already cited under Arts. II and III, this section.)

IV. APPROVAL OF OTHER AUTHORITY.

An act of the general assembly not coming within the exceptions stated in the constitution, Art. II, § 26, which is passed to take effect and be in force when a majority of the voters at an election shall declare in favor, of a salary law, and if a majority of the voters do not so declare to be void, is passed to take effect upon the approval of authority other than the general assembly, and it is therefore unconstitutional and void: State, ex rel., v. Garver, 66 O. S. 555.

An act authorizing a board of county commissioners to issue bonds to repair, enlarge or rebuild a courthouse, to be determined by (them) is not in conflict with this section: State, ex rel., v. Commissioners, 3 O. C. C. 403, 2 O. C. D. 227.

A statute (90 v. 263) giving cities of the first class to annex contiguous municipal corporations, upon majority vote, by election of all such corporations affected; is not in contravention of this section: State, ex rel., v. Cincinnati, 8 O. C. C. 523, 8 O. C. D. 689.

The Rose county local option law does not contravene either clause of this section: Gassman v. Kerns, 7 O. N. P. (N.S.) 626.

This section does not prevent the general assembly from passing a statute, which authorizes the county or township to subscribe to the capital stock of a railroad or turnpike company upon the approval of the vote of the people: Railroad v. Commissioners, 1 O. S. 77.

Article VIII, § 6, forbids the enactment of such statutes under the present constitution: Loomis v. Spencer, 1 O. S. 153.

Article II, § 30, provides specifically for submitting statutes, which change county lines or remove county seats, to popular vote: Noble v. Baker, 5 O. S. 524.

Where township trustees are authorized by one section of a statute, to purchase land for a cemetery, and to assess a certain per centum upon the taxable property of the township to pay for the land purchased; and another section provides that before such assessment shall be made, it shall be necessary to submit the question to the voters of the township at an election for that purpose duly called, it was held that the statutory provision requiring such preliminary vote is not in contravention of the twenty-sixth section of Art. II, of the constitution of the state: Trustees v. Cherry, 8 O. S. 561.

The second section of the act of April 9, 1874, which provides that the first section thereof "shall take effect, and be in force when and as soon as the same shall be adopted by a majority of all the electors," "and when suitable county buildings shall have been erected," by the citizens of Youngstown, is not to be construed as making the act "to take effect upon the approval of any other authority than the general assembly," contrary to the provision of § 16, Art. II, of the constitution; the proper construction of said section of the act is, that the first section thereof shall become a law when adopted by the electors, and be enforced or carried into execution when the buildings shall have been erected: Newton v. Commissioners, 26 O. S. 618.

1 Debates, 164, 259; 2 Debates, 215-219, 221-228, 318, 568, 578, 579, 633, 664, 807, 832, 858, 870.

Election and appointment of officers, and the filling of vacancies; vote for U. S. senator to be *viva voce*.

SECTION 27. The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the general assembly, except as prescribed in this Constitution, and in the election of United States senators; and in these cases the vote shall be taken "*viva voce*."

For elections, see Art. XVII.

For proposed renumbering of this section, see 98 v. 412.

- I. Cited.
- II. Who are officers.
- III. Election and appointment of officers.

- IV. Filling vacancies.
- V. Appointing power not to be exercised by general assembly.

I. CITED.

State, ex rel., v. Brewster, 44 O. S. 589; Mason v. State, ex rel., 58 O. S. 30; State, ex rel., v. Connor, 5 O. C. C. 305, 3 O. C. D. 151; Cincinnati v. Gass, 1 O. N. P. (N.S.) 169, 13 O. D. (N.P.) 703; Burch v. Harte, 1 O. N. P. (N.S.) 477, 14 O. D. (N.P.) 433.

II. WHO ARE OFFICERS.

Emolument is a usual, but not a necessary element to constitute an office. Authority and power relating to the public interests, conferred by statute, and which may be vested in a board or individuals by election or the appointing power of the state, create an office: State, ex rel., v. Kennon, 7 O. S. 547.

The statutes of April 12, 1858 (55 v. 122, 136), which provide for the creation of a board, authorizing it to appoint commissioners of the statehouse, and the directors of the penitentiary of the state, and to fill all vacancies which might occur in the offices of directors or statehouse commissioners, and authorizing such board or a majority to remove any director of the penitentiary for causes specified, or which might by the board be deemed sufficient, created offices; and conceding that the general assembly could provide for the creation of such board and offices, yet the general assembly could not exercise the power of appointing the officers of such board without exercising "appointing power," which is forbidden by the constitution. The exercise of the power of appointment and removal of state officers, and the filling of vacancies which may occur in state offices, is a high public function and trust, and not a private, or casual, or incidental agency; and the officers of a board so created by statute to exercise these public functions, are vested with official state power, and hold and exercise a public franchise and office: State, ex rel., v. Kennon, 7 O. S. 547.

Members of a market house commission, appointed by the mayor and approved by council under provision of an act of the legislature, whose powers must be exercised under the supervision and subject to the approval of the board of public service, whose term of office ceases with the completion of the market house, and who serve without compensation, are not "officers" within the contemplation of the constitution: Slatmeyer v. Springborn, 1 O. N. P. (N.S.) 157 [reversed on another point, Slatmeyer v. Springborn, 5 O. C. C. (N.S.) 89, 16 O. C. D. 100].

A notary public is a public officer: Burch v. Harte, 1 O. N. P. (N.S.) 477, 14 O. D. (N.P.) 433.

III. ELECTION AND APPOINTMENT OF OFFICERS.

The general assembly, under this section, may direct by law the manner in which any officer, not otherwise provided for by the state or national constitution, shall be elected or appointed; whether such officer shall be elected or appointed is left to the discretion of the general assembly: State, ex rel., v. Covington, 29 O. S. 102.

The election and the appointment of an officer as authorized by Art. II, § 27, are different and distinct modes of filling an office: State, ex rel., v. Constantine, 42 O. S. 437.

An amendatory statute requiring the county commissioners to appoint the county surveyor, then in office, to discharge duties of county engineer, the latter office not having been abolished, is void: State, ex rel., v. Staley, 5 O. C. C. 602, 3 O. C. D. 294.

IV. FILLING VACANCIES.

The general assembly may by law direct the manner in which all offices existing or created by law or vacancies therein shall be filled by appointment, except in cases provided by the constitution. Directing by law the manner in which an appointment shall be made, and making an appointment, are the exercise of two different and distinct powers; the one prescribing how an act shall be done, being legislative; and the other, doing the act, being administrative: State, ex rel., v. Kennon, 7 O. S. 546.

This section read in connection with § 1, Art. X, seems to preclude the claim that there is any general spirit pervading the constitution opposed to vesting the appointment of municipal officers in the governor or elsewhere: State, ex rel., v. Smith, 44 O. S. 348.

The power conferred upon the general assembly by Art. II, § 27, of the constitution, to provide for the filling of vacancies in office, refers to such vacancies as may occur fortuitously. It does not authorize the creation of an interval between the official terms of persons elected to the office of sheriff: State, ex rel., v. Thrall, 59 O. S. 368.

Vacancies that may be filled by appointment are such as result from the happening of events, the time of which can not reasonably be foreseen and provided for by election: State, ex rel., v. Beal, 60 O. S. 203.

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The duty and power of making appointment to fill a vacancy in the office of lieutenant-governor is not specially conferred on the executive branch of the government by the constitution, and rests wherever the legislature may vest it. (Art. II, § 27.) Such duty being imposed on the governor by statute, it is not an executive function, but is a ministerial duty: *State, ex rel., v. Nash*, 66 O. S. 612.

There is no provision in the constitution for filling a vacancy in the office of lieutenant-governor, except as authorized under § 27, Art. II; and when such vacancy occurs it must in all cases be filled by appointment by the governor as provided in G. C. § 141. The term of office of such appointee shall be for the unexpired portion of the term and until his successor is elected and qualified as provided in G. C. § 10; and "the first proper election" is the first election at which a lieutenant-governor would have been chosen had no such vacancy occurred: *State, ex rel., v. Nash*, 66 O. S. 612.

V. APPOINTING POWER NOT TO BE EXERCISED BY GENERAL ASSEMBLY.

"The phrase 'appointing power,' as here used, is one of no ambiguous signification. When employed in reference to matters pertaining to government, or to the distribution of the powers of government, it means the power of appointment to office—the power to select and indicate by name, individuals to hold office and to discharge the duties and exercise the powers of officers. Theirs is a public duty, charge and trust, conferred by public authority, for public purposes of a very weighty and important character. Their duties, their charge and trust, are not transient, occasional or incidental, but durable, permanent and continuous": *State, ex rel., v. Kennon*, 7 O. S. 546.

The conferring of authority on the judges of the superior court of Cincinnati to appoint trustees to carry out the purpose of the act of May 4, 1869 (66 v. 80), the construction of a railroad by that city, is not the exercise of appointing power by the general assembly, which this section forbids. It is not the creation of a new office, but the annexing of a new duty to an existing office: *Walker v. Cincinnati*, 21 O. S. 15.

The act to reorganize cities of the first grade, of the second class (Columbus), and to authorize the appointment of a board of control by the council, passed February 27, 1885 (82 v. 54), is not in conflict with § 27, Art. II, of the constitution: *State v. Pugh*, 43 O. S. 98.

An act creating a commission for the erection of a soldiers' monument, is valid: *Gleason v. Cleveland*, 49 O. S. 431.

An act providing that the term of office of clerks thereafter elected should begin on the first Monday of August next after their election, is valid: *State, ex rel., v. McCracken*, 51 O. S. 123.

A statute which provides that municipal employes shall not be removed or discharged, except in accordance with the provisions of statutes, is not an exercise of appointing power, and is valid: *State, ex rel., v. Hall*, 2 O. C. C. (N.S.) 237, 15 O. C. D. 361.

Contra: *Bender v. Cushing*, 14 O. D. (N.P.) 65.

1 Debates, 164, 259, 260; 2 Debates, 164, 318, 568, 569, 578, 590, 653, 664, 807, 832, 858, 870.

Retroactive laws.

SECTION 28. The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state. (*See Const. 1802, Art. VIII, § 16.*)

For proposed renumbering of this section, see 98 v. 412.

As to the power of the general assembly to alter, revise, and amend the charters of incorporated companies, see *Const. 1802, Art. VIII, § 16.*

I. Applied, cited, construed, referred to, etc.

II. What are retroactive laws.

III. Specific illustrations.

- A. Bounties.
- B. Taxes.
- C. Assessments.
- D. Intoxicating liquors.
- E. Vested property rights.

F. Statutes requiring performance of moral duty.

G. Procedure and remedies.

H. Other cases.

IV. Laws impairing the obligations of contracts.

V. Just and equitable terms.

VI. Manifest intention.

VII. Curative statutes.

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

McGill v. State, 34 O. S. 228; *Dengenhart v. Cracraft*, 36 O. S. 549 [citing *Miller v. Hine*, 13 O. S. 565]; *Goshorn v. Purcell*, 11 O. S. 646;

Arrowsmith v. Hamering, 39 O. S. 573; State v. Sinks, 42 O. S. 345; State, ex rel., v. Hamilton, 47 O. S. 52; Hixson v. Burson, 54 O. S. 470; Palmer v. Tingle, 55 O. S. 423; State, ex rel., v. Guilbert, 56 O. S. 575; Thomas v. State, 76 O. S. 341; Mirich v. Gims, 79 O. S. 174; Gray v. Toledo, 80 O. S. 445; Poag v. Shaw, 10 O. C. C. 448, 6 O. C. D. 523, 3 O. D. (N.P.) 269; Toledo v. Marlow, 8 O. C. C. (N.S.) 121, 18 O. C. D. 298 [affirmed, without report, in Toledo v. Marlow, 75 O. S. 574]; Hostetter v. State, 5 O. C. C. (N.S.) 337, 16 O. C. D. 702; Toledo v. Marlow, 8 O. C. C. (N.S.) 121, 18 O. C. D. 298 [affirmed, without report, Toledo v. Marlow, 75 O. S. 574; McAlpin v. Clark, 1 O. N. P. 195, 2 O. D. (N.P.) 160; Loan Association v. Hanson, 5 O. N. P. 162, 7 O. D. (N.P.) 179; Waterhouse v. Waterhouse, 6 O. N. P. 106, 8 O. D. (N.P.) 73; In re Hobelman's Assignment, 7 O. N. P. 661, 5 O. D. (N.P.) 403; Cincinnati v. Railway, 9 O. N. P. (N.S.) 433; Horstman v. Railway, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670.

II. WHAT ARE RETROACTIVE LAWS.

"The words 'retrospective' and 'retroactive,' as applied to laws, seem to be synonymous. Justice Story thus defines a retrospective law: 'Upon principle, every statute which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective'": Rairden v. Holden, 15 O. S. 207.

A statute which imposes a new or additional burden, duty, obligation or liability, as to past transactions, is retroactive: Miller v. Hixson, 64 O. S. 39.

It would seem obvious that the statute under consideration operating retrospectively, would impair the vested right of a judgment creditor by imposing upon him a new obligation with respect to the judgment, and taking away utterly his vested right in the immunity of his judgment from review under the law as it stood when the rights of the parties were finally determined. To show the pertinency of numerous adjudicated cases, it is necessary to observe that, with respect to the present question, it is not practicable to distinguish between an appeal with a view to a trial de novo and a proceeding in error to review a judgment of an inferior court for error appearing upon its record. They are alike resorts to a jurisdiction which §§ 2 and 6, of Art. IV, of our constitution denominate appellate, and they are equally effective to destroy the final character of the judgment rendered, by requiring the parties to bear the burden of a retrial upon questions of fact or of law, or both. A statute of this character was considered in Hill v. Sunderland, 3 Vt. 507, and it was adjudged to be void. In the course of the opinion, the question was propounded as suggestive of an inevitable answer: "When will be the end of strife, if not when a judgment is rendered which is final by the laws then existing?" A judgment final when rendered is representative of property in its highest form, for there remains no condition or contingency to affect the vested right of the prevailing party. Attention to a few of the many harmonious cases will show that, for the reasons already stated, the act, if permitted to operate retrospectively, would affect rights which are so determined and established that it is not within the function of legislation to disturb them: Gompf v. Wolfinger, 67 O. S. 144. (The court was discussing a statute [act of October 22, 1902] by which the legislature restored jurisdiction to the supreme court and attempted to make such statute apply to judgments rendered before its enactment.) See, also, Bevitt v. Diehl, 12 O. D. (N.P.) 315.

III. SPECIFIC ILLUSTRATIONS.

A. Bounties. Statutes which authorize the payment of bounties to volunteers (act of March 28, 1864; 61 v. 74; act of March 6, 1866; 63 v. 188; and act of April 16, 1867; 64 v. 231) are not rendered invalid by this provision: Trustees v. Dillon, 16 O. S. 38; State, ex rel., v. Harris, 17 O. S. 608; State, ex rel., v. Trustees, 20 O. S. 288; State, ex rel., v. Trustees, 20 O. S. 362.

B. Taxes. The power vested in the general assembly under § 6, Art. XIII, of the constitution, to restrict the powers of taxation and assessment by municipal corporations, is subject to the limitations imposed by this provision, and the provision that the general assembly shall pass no "laws impairing the obligation of contracts": Goodale v. Fennell, 27 O. S. 426.

This section does not render invalid a statute which provides for the employment by county commissioners of a tax inquisitor to discover omitted taxes: State, ex rel., v. Cappeller, 39 O. S. 207.

A statute which authorizes the levy of taxes for paying deficiencies already accrued is valid: Holtz v. Commissioners, 41 O. S. 423.

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A statute invalidating a judgment by the treasurer of taxes of the current year and the penalties thereon, is valid: *Wade v. Kimberly*, 5 O. C. C. 33, 3 O. C. D. 18.

A statute which authorizes county auditors to charge upon the duplicate, taxes for any year which had been omitted, including taxes omitted prior to the enactment of such statute, was held not to be invalid, because retroactive (see G. C. § 5399, et seq.): *French v. Insurance Co.*, 12 O. D. (N.P.) 183.

An inheritance tax law (act of April 25, 1904; 94 v. 398) was held not to be retroactive and to apply only to deaths occurring on the date it took effect or subsequent thereto: *Eury v. State*, 72 O. S. 448 [reversing *Hostetter v. State*, 5 O. C. C. (N.S.) 337, 16 O. C. D. 702].

C. Assessments. The power given to the county commissioners by the two-mile assessment pike act of March 31, 1868, and May 9, 1868 (as amended, see G. C. § 7322, et seq.), of assessing lands which have not been returned by the viewers, where, in a pending proceeding, the improvement had been ordered before the act conferring the power was passed, is not in conflict with § 28, Art. II: *Parker v. Burgett*, 29 O. S. 514.

Under the two-mile assessment pike act (G. C. § 7322, et seq.), an improvement was ordered; afterward and before the contract was made or assessment ordered, the statute was amended (April 15, 1880), by which the rule apportioning the expenses was changed. An assessment made according to the statute as amended, was held to be right, and not give a construction to the act which made it retroactive: *Commissioners v. Greene*, 40 O. S. 318.

The rights and liabilities of abutting owners, growing out of special assessments for street improvements, are fixed by the law existing when the improvement is ordered: *Cincinnati v. Seasongood*, 46 O. S. 296.

D. Intoxicating liquors. The law commonly known as the Scott law, passed April 17, 1883 (see G. C. § 6072), which made the assessment on the traffic in intoxicating liquors a lien on the real property in which the business was conducted, is not in conflict with this section: *State v. Frame*, 39 O. S. 399.

General Code §§ 13206 and 13207, which forbid sales of intoxicating liquor within two miles of an agricultural fair, is not in conflict with this section: *Heck v. State*, 44 O. S. 536.

E. Vested property rights. Statutes which affect property rights are regarded as prospective in their operation unless a contrary intention is clearly shown: *Kelley v. Kelso*, 5 O. S. 198.

This section does not render invalid a statute which modifies the method of establishing and maintaining ditches (see G. C. § 6443, et seq.): *Miller v. Graham*, 17 O. S. 1.

The statutes on the subject of the sale or lease of an estates tail, are invalid as far as they apply to estates which were in existence at the time of the passage of such statute (see G. C. § 11925, et seq.): *Gilpin v. Williams*, 25 O. S. 283; *Ream v. Wells*, 61 O. S. 131; *Cameron v. Goebel*, 20 O. C. C. 268, 11 O. C. D. 118.

Such provisions are constitutional as far as they apply to estates created after the passage of such statute: *Nimmons v. Westfall*, 33 O. S. 213; *Oyler v. Scanlan*, 33 O. S. 308.

Under the act of April 16, 1852 (50 v. 168; see G. C. §§ 3228 to 3230), where the parties intending to execute a sale of school land made a mutual mistake, whereby the purchaser obtained a deed for the land on the payment of a less sum than was due, an act authorizing the county auditor to bring suit in his own name upon such cause of action is not a retroactive law within the meaning of this section: *Seeley v. Thomas*, 31 O. S. 201.

The act of May 7, 1869 (G. C. § 8522), in so far as it undertakes to establish possession in the purchaser at a tax sale, or those claiming under him, prior to its enactment, is in conflict with this section: *Magruder v. Esmay*, 35 O. S. 221.

The act of January 31, 1871, 68 v. 15 (R. S. § 4219, repealed, 99 v. 382; replaced by G. C. § 2496), in so far as it requires the owner of a dam constructed across a stream not navigable, and who has enjoyed the adverse use of such dam for the period of twenty-one years, to construct and maintain, at his own expense, a chute or passageway over the same for fish, is unconstitutional. Whether the act is valid where the adverse use is less than twenty-one years is not decided: *Woolever v. Stewart*, 36 O. S. 146.

Section 218-223, Bates' Statutes, in so far as it attempts to make the findings, maps, plats and surveys, prepared by the canal commission, competent or prima facie evidence of the truth of such findings, or the boundaries of such lands, or that the state has the ownership of such lands, or an interest therein, is unconstitutional and void, being in conflict with § 19, of the bill of rights, and § 28, of Art. II, of the

constitution: *State v. Tin & Japan Co.*, 66 O. S. 182 [affirming *State v. Tin & Japan Co.*, 21 O. C. C. 218, 11 O. C. D. 587].

The right of the owner of land to lateral support is not a mere easement, but is a property right; and if the effect of a statutory provision is to abrogate the common law rule with reference to existing rights, such provision violates this section: *Belden v. Franklin*, 8 O. C. C. (N.S.) 159, 18 O. C. D. 373.

A statute providing for the priority of a mechanic's lien taken after the passage of the statute over a mortgage taken before the passage, is unconstitutional: *Feike v. Railway*, 12 O. C. C. 362, 5 O. C. D. 640.

A statute giving a lien for the care of animals (see G. C. § 8353, et seq.) was intended to be prospective only: *Graham v. Winchell*, 3 O. N. P. 106, 4 O. D. (N.P.) 139.

A city may regulate billboards and such structures, but such regulations must not be retroactive, and the council has no right to regulate existing billboards, when such billboards violated no ordinance at time they were erected: *Cusack v. Cincinnati*, 9 O. N. P. (N.S.) 466.

F. Statutes requiring performance of moral duty. Where public money in the custody of a public officer of this state and with the disbursement of which money he is charged by law, is stolen or otherwise lost without his fault, and the legislature pass an act exonerating such officer and his sureties from the payment of such money, and direct that a tax be levied in the territory upon which the loss must fall to meet the deficit, such an act is not forbidden by the constitution, state or federal: *Board of Education v. McLandsborough*, 36 O. S. 227.

A statute which provides for releasing a judgment against the sureties of a county treasurer, such release not to take effect unless a majority of the voters of such district vote in favor thereof, does not violate this section: *State v. Board of Education*, 38 O. S. 3.

An act providing for the refunding of taxes erroneously paid is void so far as it creates and attaches a liability to a county for a past transaction: *Commissioners v. Rosche Bros.*, 50 O. S. 103.

The general assembly may pass an act authorizing a county to pay a demand not legally enforceable, but which, in good conscience, it ought to pay. Therefore, the act of April, 1904, for the relief of county treasurers and county commissioners is not retroactive: *State, ex rel., v. Gibson*, 4 O. C. C. (N.S.) 433, 16 O. C. D. 784 [affirming *State, ex rel., v. Gibson*, 2 O. N. P. (N.S.) 221, 15 O. D. (N.P.) 73].

A statute which requires county commissioners to issue bonds for the purpose of reimbursing the holders of bonds which have been declared unconstitutional, was said to be constitutional in *Insurance Co. v. Commissioners*, 106 Fed. 123, 45 C. C. A. 233, 12 O. F. D. 619 [reversing *Insurance Co. v. Commissioners*, 99 Fed. 846, 13 O. F. D. 198].

G. Procedure and remedies. This section was intended to prevent statutes changing the remedies whereby rights might be protected as long as the rights themselves were not impaired subsequently: *Hays v. Armstrong*, 7 O. (pt. 1) 248; *Towsey v. Avery*, 11 O. 90; *Johnson v. Bentley*, 16 O. 97; *Lewis v. McElvain*, 16 O. 347; *Trustees v. McCaughy*, 2 O. S. 152; *Acheson v. Miller*, 2 O. S. 203; *Butler v. Toledo*, 5 O. S. 225; *Goshorn v. Purcell*, 11 O. S. 641; *Rairden v. Holden*, 15 O. S. 207.

Statutes upon the subject of the qualifications and competency of witnesses deal with the remedy; and this section does not prevent such statutes from applying to cases which were pending when this statute took effect: *John v. Bridgman*, 27 O. S. 22.

The legislature can not create a liability for acts to which there was no liability when they were committed; but where a remedy exists, the legislature may change it, as well to acts theretofore, as to those thereafter done: *Railroad v. Commissioners*, 35 O. S. 1.

The act of February 6, 1871 (68 v. 17; G. C. § 12194), giving sureties in a judgment, certified as such therein, all the rights and remedies against the principal debtor that the plaintiff had at the time of payment by the surety, is a remedial act, and not retroactive within the meaning of § 28, Art. II, of the constitution of 1851: *Peters v. McWilliams*, 36 O. S. 155.

It is not within the power of the legislature to abridge the period within which an existing right may be asserted so that there shall not remain a reasonable time within which an action may be commenced: *Lafferty v. Shinn*, 38 O. S. 46.

A retrospective statute purely remedial in nature does not violate this section: *Gager v. Prout*, 48 O. S. 89.

An act providing "that in any case in which a judgment has been or may hereafter be rendered in any court, whether a court of record or not, and such judgment is or shall hereafter become dormant, action can only be brought to revive the same within twenty-one years after it became dormant," is valid: *Bartol v. Eckert*, 50 O. S. 31.

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Retrospective laws that violate no principle of natural justice, but, on the contrary, are in furtherance of equity and good morals, are not forbidden by this statute: *Kloeppinger v. Grasser*, 1 O. C. C. (N.S.) 457, 15 O. C. D. 90 [reversed, without report, in *Grasser v. Kloeppinger*, 71 O. S. 505].

Assuming that a statute, securing a homestead, in force when a judgment is rendered, may, without infringement of the constitutional provisions as to retroactive laws, be repealed, so as to deprive the debtor of such exemption still, even in cases where such constitutional inhibition does not apply, if it be doubtful whether it was intended that the new act should operate retrospectively, the doubt should be resolved against such operation: *Allen v. Russell*, 39 O. S. 336.

This section does not apply to a statute with reference to an action upon the bond of an executor or administrator (see G. C. § 10873): *Rairden v. Holden*, 15 O. S. 207.

A judgment which is final by the laws existing when it is rendered can not constitutionally be made subject to review by a statute subsequently enacted; and the act of October 22, 1902, to amend § 7610, Revised Statutes (see G. C. § 12250), being incapable of a retrospective operation, does not confer upon the supreme court jurisdiction to review judgments which the circuit court had rendered prior to its passage and which were not subject to review under the provision of the act of May 12, 1902: *Gompf v. Wolfinger*, 67 O. S. 144.

H. Other cases. Section 17, as amended March 7, 1873 (70 v. 53), of the act establishing boards of county commissioners and prescribing their duties (51 v. 422; see G. C. § 2395, et seq.), in authorizing the commissioners of a county to maintain the action therein provided for, to effect the removal of obstructions from a public highway, existing at the time of its passage, is not in conflict with this section: *Railroad v. Commissioners*, 31 O. S. 338.

A statute which provides for examination for admission to practice medicine is not retroactive: *State, ex rel., v. Coleman*, 64 O. S. 377; see, also, *France v. State*, 57 O. S. 1.

The act of May 10, 1902 (G. C. § 274, et seq.), entitled, "An act to create a bureau of inspection and supervision of public offices, and to establish a uniform system of public accounting, auditing and reporting, under the administration of the auditor of state" (95 O. L. 511), is not rendered unconstitutional by the ninth section thereof providing that the expense of maintaining and operating the bureau of inspection shall be paid by the counties of the state out of the general county fund in proportion to their population, nor by the tenth section thereof, providing that each taxing body be chargeable with the expense of auditing the accounts under its jurisdiction: *State, ex rel., v. Shumate*, 72 O. S. 487.

The legislature might provide that the withdrawal by property owners of their consent to the location of a street railway shall not render invalid such a right already granted (see G. C. §§ 9105 to 9107): *Hume v. Traction Co.*, 13 O. D. (N.P.) 70.

An act which provides that upon a conviction of a third felony, the prisoner shall be imprisoned for his natural life, is no "ex post facto law," although the former crimes may have been committed prior to the passage of the law, because it merely attaches an additional offense to a felony: *Blackburn v. State*, 50 O. S. 428.

IV. LAWS IMPAIRING THE OBLIGATIONS OF CONTRACTS.

The act of May 24, 1885 (82 v. 238; G. C. § 8568, et seq.), to regulate conditional leases and sales of personal property, is not in conflict with the constitution: *Weil v. State*, 46 O. S. 450.

The act of May 3, 1852 (50 v. 263), in relation to plank road and turnpike companies, in so far as it undertakes to impose upon stockholders, without their assent, individual liabilities not imposed by their charters, or by the laws under which they have been organized, is a law impairing the validity of the stockholders' contract with the company, and, therefore, unconstitutional: *Ireland v. Turnpike Co.*, 19 O. S. 369.

The application of the provisions of so much of the act of April 18, 1870, amending G. C. § 11901, as authorize the court to order a rescission of a contract, or to render judgment for plaintiff only upon his giving a bond of indemnity, to causes of action which accrued before the passage of that act, is inhibited by this section: *Stock Co. v. Saas*, 24 O. S. 542.

The other provisions of amended G. C. § 11901 are remedial only, and do not contravene this section: *Templeton v. Kraner*, 24 O. S. 554.

For the purpose of promoting the public welfare, the legislature has power to regulate or forbid the sale of patented articles to the same extent as articles not patented, if no discrimination is made: *Palmer v. State*, 39 O. S. 236.

A fire insurance company, organized under a special charter before the present constitution, is subject to such reasonable regulations as the legislature may prescribe by general law: *State, ex rel., v. Insurance Co.*, 50 O. S. 252.

Where the charter of banks prescribes a certain tax, it is unconstitutional to levy another (decided under the constitution of 1802): *State v. Bank*, 7 O. (pt. 1) 125; *State, ex rel., v. Moore*, 5 O. S. 444.

The charters of banks which provided for the rate of taxation thereon were held by the Ohio supreme court not to be contracts; or, if contracts, to be invalid as waiving the power of the state to levy taxes: *Debolt v. Trust Co.*, 1 O. S. 563; *Bank v. Debolt*, 1 O. S. 591; *Knoop v. Piqua Bank*, 1 O. S. 603; *Toledo Bank v. Toledo*, 1 O. S. 622.

The supreme court of the United States, however, held that such statutes were contracts, and, as such, were valid and could not be modified by subsequent legislation: *Piqua Bank v. Knoop*, 16 How. 369; *Bank v. Debolt*, 18 How. 380; *Dodge v. Woolsey*, 18 How. 331.

The statute which creates a state liability board of awards (G. C. § 1465-37, et seq.), does not impair the obligation of contracts: *State ex rel., v. Creamer*, 85 O. S. 349.

The sixth section of the act of April 29, 1854 (52 v. 177), "to provide for the permanent location of the seat of justice of Noble county, by the legal voters thereof, and for the erection of public buildings therein," provides only for the natural and necessary exigencies arising from fixing the county seat either at Olive or Sarahsville; and which exigencies must have been in the contemplation of the voters, whether provided for by the act or not. This act is not in conflict with this provision of the constitution: *Noble v. Commissioners*, 5 O. S. 524.

The fifth section of the act of March 1, 1853 (51 v. 529), "to provide for the removal of the county seat of Perry county from the town of New Lexington to the town of Somerset," imposes upon the county of Perry a forfeiture of subsisting rights acquired under a legal contract, in the event of a majority vote against the removal of the seat of justice, and is, therefore, unconstitutional: *State v. Commissioners*, 5 O. S. 497.

If a statute providing for abandoning the Hocking canal and leasing it to a railway (91 v. 326) impairs the obligation of a contract between the state and the United States, a private citizen can not complain thereof: *Voight v. Railroad*, 58 O. S. 123.

An ordinance repealing the contract ordinance before expiration is void as against this section: *Gas Co. v. Lima*, 4 O. C. C. 22, 2 O. C. D. 396.

This section does not render invalid statutes which are passed for the relief of county officials: *State, ex rel., v. Gibson*, 4 O. C. C. (N.S.) 433, 16 O. C. D. 784.

A release by the supreme court on habeas corpus proceedings, because the accused had not been legally extradited and a release by the probate court of the accused because he had remained in jail more than two terms, do not prevent second prosecution; they are not contracts with the accused and therefore there is no impairing of them: *Ex parte McKnight*, 3 O. N. P. 255, 4 O. D. (N.P.) 284; see, also, *Bank v. McGuffey*, 1 O. C. C. 88, 1 O. C. D. 53.

A change of judicial decision seems to be regarded by our supreme court as a law impairing the obligation of contracts: *Lewis v. Symmes*, 61 O. S. 471; *Cincinnati v. Taft*, 63 O. S. 141; *Thomas v. State, ex rel.*, 76 O. S. 341.

V. JUST AND EQUITABLE TERMS.

This provision is permissive, and not mandatory, and it still remains a question for the courts to determine under what circumstances, on what principles of equity, they will give effect to an instrument or conveyance which is invalid by law: *Hout v. Hout*, 20 O. S. 119.

The jurisdiction conferred by this phrase is equitable in its character, rather than legal: *Hume v. Dixon*, 37 O. S. 66.

VI. MANIFEST INTENTION.

"The intention must be manifest; but how manifested is not expressed. The courts, under a direction to find the intention, with a view to the correction of an omission or defect, in analogy to like cases, would not act unless the intention was manifest; and in view of this principle of law, it is probable the expression was used. It may happen that a mere inspection of the imperfect instrument will show what is the omission, defect or error, and make manifest the intention of the parties. But giving the strictest meaning to the expression, 'manifest intention,' as applied to a written instrument, we think the courts are not confined to a mere inspection of the instrument, as to which the omission, defect or error is alleged to exist, but are, at least, entitled to be placed in the same position as if called on to construe and give effect to a perfect instrument. The object being to ascertain if there be an omission, defect or error in the instrument, which has

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prevented the manifest intention of the parties from being carried into effect, the court may look to the subject-matter, the connection of the parties with it and the surrounding circumstances at the time of the execution of the instrument": *Goshorn v. Purcell*, 11 O. S. 641.

"The language of this proviso extends not only to omissions of officers in proceedings connected with the execution of deeds, but to omissions, defects and errors in deeds—to the omissions, not only of officers, but of parties. We should, therefore, look rather to the principle of justice and right, which the rule was intended to enforce by an application to past transactions, than to particular instances in which a like application had been made, though historically connected with the adoption of the rule": *Goshorn v. Purcell*, 11 O. S. 641.

The act of March 25, 1880 (77 v. 83), which provides "that in all municipal corporations which may have heretofore, by ordinance, authorized the use of the streets for certain purposes, such ordinance shall be valid," is not in conflict with this section: *Kumler v. Silsbee*, 38 O. S. 445.

VII. CURATIVE STATUTES.

"It is obvious that the instrument or proceeding must be one which, had there been no omission, defect or error, would have carried into effect the intention of the parties or officers. If the instrument or proceedings be such that, in the absence of any omission, defect or error, it would have been inoperative, then it can not be regarded as within the meaning of the proviso. This is shown from the requisition, that the omission, defect or error must arise from the want of conformity of the instrument or proceeding with the laws of the state. An instrument or proceeding which, having no omission, defect or error, would still not conform with the laws of the state, and, therefore, not carry into effect the intention, can not be one of those intended. The proviso proceeds on the assumption that the instrument or proceeding, but for the omission, defect or error, would have conformed to the laws, and therefore have carried into effect the intention of the parties. It, therefore, does not extend to any instrument or proceeding not authorized by the laws of the state, as a valid and effectual expression of the intention of the parties. It does not authorize the general assembly to give power or capacity to parties not possessed when any instrument or proceeding was made or had. An attempt to do this would come within the prohibition against retroactive laws": *Goshorn v. Purcell*, 11 O. S. 641.

"The principle in view of which the language of the proviso should be construed, would extend that language to cases where parties competent to carry their intention into effect, by an instrument or proceeding made or had in conformity with the laws of the state, attempt to do so, but fail on account of an omission, defect or error; and the intention being manifest, justice and equity require that it should not be defeated by such omission, defect or error. The parties must be competent, their intention must be manifest—it must be evinced by some act, by some instrument or proceeding, though imperfect from a want of conformity with the law, and the relief must be upon just and equitable terms": *Goshorn v. Purcell*, 11 O. S. 641.

This section authorizes the legislature to enact curative statutes which are retroactive in their character, if they do not impair existing valid contracts or disturb vested rights: *Burgett v. Norris*, 25 O. S. 308.

Where a municipal corporation, in exercising the power of assessment to pay for a public improvement, levies the assessment upon property which was not subject to be charged therewith, and, in a suit brought to enforce the assessment, the property thus charged was ordered to be sold to pay the same, it is competent for the legislature to relieve the property thus ordered to be sold, and to require the amount improperly charged thereon to be paid out of the funds of the corporation: *State, ex rel., v. Hoffman*, 35 O. S. 435.

Under this section defects in the execution of the deed of a married woman could be corrected and cured, although such conveyance was made prior to the passage of such statutes: *Goshorn v. Purcell*, 11 O. S. 641; *Purcell v. Goshorn*, 2 D. 90; *Miller v. Hine*, 13 O. S. 565; *Smith v. Turpin*, 20 O. S. 478.

For the validity of curative legislation, see, also, *Railway v. Horstman*, 72 O. S. 93 [reversing *Horstman v. Railway*, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670; *Horstman v. Railway*, 12 O. D. (N.P.) 756, and *Horstman v. Railway*, 14 O. D. (N.P.) 545].

The legislature has authority under favor of this section to enact curative statutes legalizing contracts made ultra vires by municipal corporations if the subject-matter thereof is such that the legislature would have had original authority to legislate with reference thereto: *Columbus v. Heating & Lighting Co.*, 16 O. D. (N.P.) 311.

1 Debates, 164, 263-270, 273-284; 2 Debates, 165-175, 185-210, 240-281, 286, 318, 569, 589-593, 596, 597, 605-632, 664, 808, 832, 858, 870.

SECTION 29. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly.

No extra compensation.

For proposed renumbering of this section, see 98 v. 412.

I. Cited.

II. Specific Illustrations.

I. CITED.

State, ex rel., v. Trustees, 20 O. S. 362; State, ex rel., v. Oglevee, 36 O. S. 324; Chalfant v. State, ex rel., 37 O. S. 60; State, ex rel., v. Cappeller, 39 O. S. 207; State, ex rel., v. Smith, 44 O. S. 348; Burch v. Harte, 1 O. N. P. (N.S.) 477, 14 O. D. (N.P.) 433.

II. SPECIFIC ILLUSTRATIONS.

At the time of the raid through Ohio by the confederate forces, led by Morgan, in 1863, and their destruction of private property, there was no subsisting law requiring or authorizing the payment by the state of the damages thereby occasioned to individuals; and, therefore, under the provisions of this section, claims for such damages can not be paid out of the state treasury till allowed by the concurrent votes of two-thirds of the members elected to each branch of the general assembly. Upon the question whether such claims have been allowed by the number of members required by the constitution, the legislative journals must furnish the appropriate evidence: Fordyce v. Godman, 20 O. S. 1.

A single branch of the general assembly can not, by resolution, allow compensation for extra services performed by its sergeant-at-arms, such compensation being inhibited by this section, unless the services were provided for by pre-existing law, or the allowance be ratified by two-thirds of the members elected to each branch of the general assembly: State, ex rel., v. Williams, 34 O. S. 218.

The appropriation of \$10,000 for Longview asylum, contained in the act of April 15, 1880 (77 v. 249), is valid. General Code §§ 2004-2034, in relation to Longview asylum, do not constitute a contract between the state and the county of Hamilton. Neither of these statutes is within the provisions of this section of the constitution, which requires the vote of two-thirds of the members elected to each branch of the general assembly. The payment of a "claim" against the state was not the subject-matter of this legislation. The sole object was the making of a provision for the support of a public institution, which the constitution enjoins (Art. VII, § 1): State, ex rel., v. Oglevee, 36 O. S. 211.

The act of March 21, 1881, appropriating money to repair the buildings of the Ohio university, is not within the operation of § 29, Art. II, of the constitution, requiring the allowance, by two-thirds of the members elected to each branch of the general assembly, of claims the subject-matter of which was not provided for by a pre-existing law: State, ex rel., v. Oglevee, 37 O. S. 1.

1 Debates, 164, 284, 285; 2 Debates, 318, 569-574, 578, 597, 633, 664, 808, 832, 858, 870.

SECTION 30. No new county shall contain less than four hundred square miles of territory, nor shall any county be reduced below that amount; and all laws creating new counties, changing county lines, or removing county seats, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties; but any county now or hereafter containing one hundred thousand inhabitants, may be divided, whenever a majority of the voters residing in each of the proposed divisions shall approve of the law passed for that purpose; but no town or city within the same shall be

New counties.

Art. II, § 31. CONSTITUTION OF THE STATE OF OHIO OF 1851.

divided, nor shall either of the divisions contain less than twenty thousand inhabitants. (*See Const. 1802, Art. VII, § 3.*)

For proposed renumbering of this section, see 98 v. 412.
See Const. 1802, Art. VII, § 3.

The power to make new counties, and to change county lines, existed under the former constitution: *State, ex rel., v. Choate*, 11 O. 511.

The act to erect the county of Noble, passed March 11, 1851, is not inconsistent with this constitution, nor repealed by it, *State, ex rel., v. Dudley*, 1 O. S. 437. Nor does the act of March 29, 1866 (63 v. 58), "to provide for the removal of the seat of justice of Wood county," contravene this provision: *Peck v. Weddell*, 17 O. S. 271; *Powers v. Reed*, 19 O. S. 189. See Art. II, § 28, note 2.

The law fixing salaries in its specific county which is to take effect, if approved by a majority of the voters in such county, is unconstitutional: *State, ex rel., v. Garver*, 66 O. S. 555 [reversing *State, ex rel., v. Garver*, 13 O. C. D. 140].

2 Debates, 210, 211, 220, 240, 318, 574-581, 590, 633, 634, 653, 663, 664, 808, 832, 858, 870.

Compensation of members and officers of the general assembly.

SECTION 31. The members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office.

For proposed renumbering of this section, see 98 v. 412.

Referred to: *Ward v. Board of Education*, 21 O. C. C. 699, 11 O. C. D. 671.

1 Debates, 293-297; 2 Debates, 211-214, 318, 634, 653, 663, 664, 808, 833, 858, 870.

Divorces and judicial power.

SECTION 32. The general assembly shall grant no divorce, nor exercise any judicial power not herein expressly conferred.

For proposed renumbering of this section, see 98 v. 412.

I. Cited. II. Divorce.

III. Exercise of judicial power.

I. CITED.

State, ex rel., v. Hawkins, 44 O. S. 98; *State, ex rel., v. Guilbert*, 75 O. S. 1.

II. DIVORCE.

The constitution of 1802 contained no such prohibition; but, in *Bingham v. Miller*, 17 O. 445, it was held that the legislature had no power, by a special act, to grant a divorce, that being the exercise of a judicial, not a legislative function—a function not granted to the legislature by the constitution; but that body having exercised the power court would pronounce them valid.

It may be of interest to the general reader to note, in passing, that result from declaring all those void which had been granted by the legislature—rendering illegitimate the issue of second marriages—the in the early history of the state the general assembly itself exercised the power to grant divorces, one instance being found in 2 O. L. 67, where Hannah Willis was granted a divorce from Isaac. Doubtless many others will be found in subsequent volumes. This pernicious practice was continued at intervals until 1848, when this court, by the decision in *Bingham v. Miller*, 17 O. 445, set its seal of condemnation upon it, which was followed by a provision in the constitution of 1851, Art. II, § 32, absolutely prohibiting it. It is to be remarked as an instance of the confusion pervading the legislative mind, respecting the division of the powers of government, that, having by the first act passed by that body on the subject, conferred upon the supreme court sole cognizance of granting divorces, and given to that court like exclusive jurisdiction by subsequent acts, the general assembly should itself continue to assume jurisdiction of the subject, and from time to time divorce mismatched couples: *Dewitt v. Dewitt*, 67 O. S. 340.

III. EXERCISE OF JUDICIAL POWER.

The authority conferred on the senate to try contested elections for judges, is not judicial power within the meaning of § 1, Art. IV, of the constitution, which requires the judicial power of the state to be vested in the courts; nor within the meaning of this section, which restricts the exercise of judicial power by the general assembly: *State, ex rel., v. Harmon*, 31 O. S. 250.

Statutes establishing methods of determining questions arising in contested elections, do not contravene this section: *Stearns v. Taylor*, 1 O. N. P. 23, 1 O. D. (N.P.) 136.

The act of February 6, 1871 (68 v. 17; G. C. § 12194), giving sureties in a judgment, certified as such therein, all the rights and remedies against the principal debtor that the plaintiff had at the time of the payment by the surety, is not the exercise of judicial functions, but is within the legislative powers of the general assembly: *Peters v. McWilliams*, 36 O. S. 155.

A statute which declares existing school districts to be legal and valid, even if they have been created by invalid special legislation, is unconstitutional: *Bartlett v. State*, 73 O. S. 54.

A statute for the relief of county officials is not legislative interference with the judgment of a court: *State, ex rel., v. Gibson*, 4 O. C. C. (N.S.) 433, 16 O. C. D. 784 [affirming *State, ex rel., v. Gibson*, 2 O. N. P. (N.S.) 221, 15 O. D. (N.P.) 73].

The senate joint resolution passed by the general assembly February 14, 1908, providing for the appointment of a committee to investigate charges of corruption in the government of the city of Cincinnati and county of Hamilton, is an exercise of judicial power not expressly conferred by the constitution, and a gross violation of this section thereof, unless it can be justified on the ground of seeking information in aid of intended legislation: *State, ex rel., v. Gayman*, 11 O. C. C. (N.S.) 257, 21 O. C. D. 59.

The enactment by the general assembly of a law which changes the policy of the state in regard to matters under governmental control, is not the exercise of judicial powers by the legislature, and does not fall within the inhibition of this section: *Hume v. Traction Co.*, 13 O. D. (N.P.) 70.

The commission on fees has no judicial power, and, therefore, fees due to the auditor and treasurer of Hamilton county are not binding: *State, ex rel., v. Richardson*, 7 O. L. R. 269.

A statute which provided for the recovery of damages against a county for injuries due to mob violence was held to be unconstitutional in the common pleas court in *Mitchell v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262. This case was, however, reversed in *Mitchell v. Commissioners*, 20 O. C. C. 660, 10 O. C. D. 801, which was affirmed in *Commissioners v. Church*, 62 O. S. 318.

1 Debates, 164, 258, 259; 2 Debates, 164, 318, 568, 633, 664, 808, 833, 858, 870.

SECTION 33. Laws may be passed to secure to mechanics, artisans, laborers, sub-contractors and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or for which they have furnished material. No other provision of the constitution shall impair or limit this power. (Adopted September 3, 1912.)

Mechanics' and
builders' liens.

Vote: "Yes," 278,582; "No," 242,385.

SECTION 34. Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; and no other provision of the constitution shall impair or limit this power. (Adopted September 3, 1912.)

Welfare of
employes.

Vote: "Yes," 353,588; "No," 189,728.

SECTION 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and

Workmen's
compensation.

Art.II, § 36. CONSTITUTION OF THE STATE OF OHIO OF 1851.

administered by the state determining the terms and conditions upon which payment shall be made therefrom, and taking away any or all rights of action or defenses from employes and employers; but no right of action shall be taken away from any employe when the injury, disease or death arises from failure of the employer to comply with any lawful requirement for the protection of the lives, health and safety of employes. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. (Adopted September 3, 1912.)

Vote: "Yes," 321,558; "No," 211,772.

Conservation of
natural resources.

SECTION 36. Laws may be passed to encourage forestry, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Laws may also be passed to provide for converting into forest reserves such lands or parts of lands as have been or may be forfeited to the state, and to authorize the acquiring of other lands for that purpose; also, to provide for the conservation of the natural resources of the state, including streams, lakes, submerged and swamp lands and the development and regulation of water power and the formation of drainage and conservation districts; and to provide for the regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and other minerals. (Adopted September 3, 1912.)

Vote: "Yes," 318,192; "No," 191,893.

Eight hour day
on public work.

SECTION 37. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work, and not to exceed forty-eight hours a week's work, for workmen engaged on any public work carried on or aided by the state, or any political sub-division thereof, whether done by contract, or otherwise. (Adopted September 3, 1912.)

Vote: "Yes," 333,307; "No," 232,898.

Removal of
officials.

SECTION 38. Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution. (Adopted September 3, 1912.)

Vote: "Yes," 347,333; "No," 185,986.

Regulating expert
testimony in
criminal trials.

SECTION 39. Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings. (Adopted September 3, 1912.)

Vote: "Yes," 336,987; "No," 185,458.

Registering and
warranting land
titles.

SECTION 40. Laws may be passed providing for a system of registering, transferring, insuring and guaranteeing land titles by the state or by the counties thereof, and for settling and

determining adverse or other claims to and interests in, lands the titles to which are so registered, insured or guaranteed, and for the creation and collection of guaranty funds by fees to be assessed against lands, the titles to which are registered; and judicial powers with right of appeal may by law be conferred upon county recorders or other officers in matters arising under the operation of such system. (Adopted September 3, 1912.)

Vote: "Yes," 346,373; "No," 171,807.

SECTION 41. Laws shall be passed providing for the occupation and employment of prisoners sentenced to the several penal institutions and reformatories in the state; and no person in any such penal institution or reformatory while under sentence thereto, shall be required or allowed to work at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be sold, farmed out, contracted or given away; and goods made by persons under sentence to any penal institution or reformatory without the State of Ohio, and such goods made within the State of Ohio, excepting those disposed of to the state or any political subdivision thereof or to any public institution owned, managed or controlled by the state or any political sub-division thereof, shall not be sold within this state unless the same are conspicuously marked "prison made." Nothing herein contained shall be construed to prevent the passage of laws providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political sub-division thereof, or for or to any public institution owned or managed and controlled by the state or any political sub-division thereof. (Adopted September 3, 1912.)

Abolishing prison contract labor.

Vote: "Yes," 333,304; "No," 215,208.

ARTICLE III.

EXECUTIVE.

SECTION 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, and an attorney general, who shall be elected on the first Tuesday after the first Monday in November, by the electors of the state, and at the places of voting for members of the general assembly. (*As amended October 13, 1885; 82 v. 446.*)

Executive department.

Amended, October 13, 1885, 82 O. L. 446.

As to time for holding elections, see Art. XVII, § 1.

Original § 1 read as follows: "Sec. 1. [Executive department.] The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor, treasurer, and an attorney-general, who shall be chosen by the electors of the state, on the second Tuesday of October, and at the places of voting for members of the general assembly." (See Const. 1802, Art. II, §§ 2, 16; Art. VI, § 2.)

Cited: State v. Barbee, 45 O. S. 347.

1 Debates, 299-302, 313, 323-327; 2 Debates, 287, 289, 293, 294, 331-333, 349, 808, 834, 859, 870.

SECTION 2. The governor, lieutenant governor, secretary of state, treasurer, and attorney general shall hold their offices

Term of office.

Art.III, § 3. CONSTITUTION OF THE STATE OF OHIO OF 1851.

for two years; and the auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified. (*See Const. 1802, Art. II, §§ 3, 16.*)

See Const. 1802, Art. II, §§ 3, 16.

For term of office under constitutional amendment, see Art. XVII, §§ 1, 2 and 3, and cases cited thereunder.

Cited by mistake: *Jiha v. Barry*, 3 O. N. P. (N.S.) 65, 16 O. D. (N.P.) 33.

1 Debates, 300, 306, 323-326, 335, 336; 2 Debates, 287, 289, 293, 349, 808, 834, 835, 859, 870.

Election returns.

SECTION 3. The returns for every election for the officers named in the foregoing election shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the president of the senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each house of the general assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen by the joint vote of both houses. (*See Const. 1802, Art. II, § 2.*)

See Const. 1802, Art. II, § 2.

The seventeenth article requires that the executive officers of the state be elected in November of the even numbered years; the second section of the third article provides that their terms of office shall commence on the second Monday of January next after their election, and § 3, of Art. III, that the returns of their election, having been transmitted to the president of the senate, shall during the first week of the session be opened and published and the result declared "in the presence of a majority of the members of each house." These sections relate to the orderly conduct of the government of the state, and they imperatively and expressly required the general assembly to be in session during the first week of the present year: *State, ex rel., v. Creamer*, 83 O. S. 412.

1 Debates, 300, 306, 324; 2 Debates, 287, 808, 835, 859, 870.

Same subject.

SECTION 4. Should there be no session of the general assembly in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the secretary of state, and opened, and the result declared by the governor, in such manner as may be provided by law.

2 Debates, 349, 808, 835, 859, 870.

Executive power
vested in gov-
ernor.

SECTION 5. The supreme executive power of this state shall be vested in the governor. (*See Const. 1802, Art. II, § 1.*)

See Const. 1802, Art. II, § 1.

Although the governor, in the exercise of the supreme executive power of the state, may, from the nature of his authority, have a discretion which can not be controlled by judicial power, yet, in regard to a ministerial act which might have devolved on any other officer of the state, and affecting any specific private right, he may be made amenable to the compulsory process of the supreme court: *State, ex rel., v. Chase*, 5 O. S. 528.

"Under our system of government, no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests—'all paying it homage, the least as feeling its care, and the greatest as not exempt from its power.' The judicial power can not interpose and direct in regard to the performance of an official act which rests in the discretion of any officer, whether executive, legislative or judicial. The constitutional provision declaring that the 'supreme executive power of this state shall be vested in the governor,' clothes the governor with important political powers, in the exercise of which he uses his own judgment or discretion, and in regard to which his determinations are conclusive. But there is nothing in the nature of

the chief executive office of this state, which prevents the performance of some duties merely ministerial being enjoined on the governor. While the authority of the governor is supreme in the exercise of his political and executive functions, which depend on the exercise of his own judgment or discretion, the authority of the judiciary of the state is supreme in the determination of all legal questions involved in any matter judicially brought before it. Although the state can not be sued, there is nothing in the nature of the office of governor which prevents the prosecution of a suit against the person engaged in discharging its duties": State, ex rel., v. Chase, 5 O. S. 528.

Under this section and the laws of the United States, the governor has authority to issue requisitions in cases of misdemeanors: State v. Hudson, 2 O. N. P. 1, 2 O. D. (N.P.) 41.

1 Debates, 299, 302; 2 Debates, 808, 835, 859, 870.

SECTION 6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed. (*See Const. 1802, Art. II, § 7.*)

He may require written information, etc.

See Const. 1802, Art. II, § 7.

Cited: State v. Hudson, 2 O. N. P. 1, 2 O. D. (N.P.) 41.

1 Debates, 300, 306; 2 Debates, 808, 835, 859, 870.

SECTION 7. He shall communicate at every session, by message, to the general assembly, the condition of the state, and recommend such measures as he shall deem expedient. (*See Const. 1802, Art. II, § 4.*)

He shall recommend measures, etc.

See Const. 1802, Art. II, § 4.

1 Debates, 300, 306, 324; 2 Debates, 287, 808, 835, 859, 870.

SECTION 8. The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation, or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matter incidental thereto. (As amended September 3, 1912.)

Limiting power of general assembly in extra session.

Vote: "Yes," 319,100; "No," 192,130.

Original § 8 read as follows: "Sec. 8. [When and how he may convene the general assembly.] He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they have been convened. (See Const. 1802, Art. II, § 9.)"

When and how he may convene the general assembly. Limiting power of general assembly in extra session.

See Const. 1802, Art. II, § 9.

The authority of the governor to convene the general assembly by proclamation is conferred by the eighth section of the third article and by its terms the authority is expressly limited to "extraordinary occasions." We should pay no sincere deference to the constitution or to the plain meaning of its terms, if we should hold those occasions to be extraordinary for whose unfailing return at regular intervals the constitution makes elaborate and careful provisions. In many respects constitutions do not execute themselves and the enactment of § 35, of the General Code pursuant to whose provisions the legislature convened in regular session was a wise precaution to avoid doubts that might have arisen, but for its enactment. It may have been unnecessary, but we perceive no warrant whatever for saying that it is unconstitutional: State, ex rel., v. Creamer, 83 O. S. 412.

1 Debates, 300, 306, 324, 336; 2 Debates, 287, 288, 808, 835, 859, 870.

Art.III, § 9. CONSTITUTION OF THE STATE OF OHIO OF 1851.

When he may adjourn the general assembly.

SECTION 9. In case of disagreement between the two houses, in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof. (*See Const. 1802, Art. II, § 11.*)

See Const. 1802, Art. II, § 11.

1 Debates, 300, 306, 324; 2 Debates, 288, 808, 835, 859, 870.

Commander-in-chief of militia.

SECTION 10. He shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States. (*See Const. 1802, Art. II, § 10.*)

See Const. 1802, Art. II, § 10.

Cited: Hubbard v. Fitzsimmons, 57 O. S. 436; State, ex rel., v. Brinkman, 7 O. C. C. 165, 3 O. C. D. 710.

1 Debates, 300, 306; 2 Debates, 808, 835, 859, 870.

May grant reprieves, commutations, and pardons.

SECTION 11. He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the general assembly, at its next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor. (*See Const. 1802, Art. II, § 5.*)

See Const. 1802, Art. II, § 5.

The act of February 1, 1853 (G. C. §§ 11174-11176), giving to parties imprisoned for nonpayment of fines the benefit of laws for the relief of insolvent debtors, and authorizing their discharge as such, is not an attempt to place the pardoning power in hands other than those of the governor of the state. It is merely a modification of penalties prescribed for certain offenses, and is not in conflict with the constitution: Scott, Ex parte, 9 O. S. 581.

A pardon does not release the uncollected costs, but the governor has the power to do so: Libby v. Nicola, 21 O. S. 414.

The governor, by virtue of the provisions of this section, is authorized, of his own motion, to reprieve or suspend, for a specified interval of time, the execution of a prisoner under sentence of death: Sterling v. Drake, 29 O. S. 457.

A full, unconditional pardon delivered, is irrevocable; and where a person imprisoned on a sentence for felony seeks a discharge by habeas corpus, based on such pardon having been issued by the governor pursuant to the constitution and statute, on the certificate of the physician to the penitentiary, that the prisoner is in imminent danger of death, it is not competent in this state, under existing statutes, to impeach such pardon in such proceeding, by proof that the physician's certificate was obtained by false representations of the prisoner, and his fraudulent acts with respect to his health, such representations having been made, and acts done, for the purpose of obtaining such certificate and such pardon: Knapp v. Thomas, 39 O. S. 377.

The act of May 4, 1885 (82 v. 236, G. C. §§ 2169 and 2170), which authorizes the board of managers of the Ohio penitentiary to allow prisoners to go upon parole, is not in conflict with this section: State, ex rel., v. Peters, 43 O. S. 629.

General Code § 12399, which provides that one who is convicted of murder in the first degree, shall not be recommended for pardon unless his innocence is established beyond a reasonable doubt, is valid and

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constitutional, and does not affect or abridge the right of the governor to pardon: *State v. Schiller*, 70 O. S. 1; *State v. Jones*, 5 O. N. P. 390, 8 O. D. (N.P.) 645.

Under this section the governor may annex any reasonable condition to a pardon as he may see fit: *Huff v. Dyer*, 4 O. C. C. 595, 2 O. C. D. 727.

The Beal law (see G. C. § 6127, et seq.) does not contravene this section by the permitting of the second election, for the fact that the second election was in favor of the sale would not absolve from an offense committed while the sale was prohibited: *Lloyd v. Dollison*, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, *State, ex rel., v. Dollison*, 68 O. S. 688].

By this section, the whole pardoning power, except as to treason and cases of impeachment, is vested in the governor exclusively, and can not be exercised directly or indirectly by any other authority: *Jiha v. Barry*, 3 O. N. P. (N.S.) 65, 16 O. D. (N.P.) 33.

1 Debates, 300, 306, 307, 324; 2 Debates, 288, 293, 808, 835, 859, 870.

SECTION 12. There shall be a seal of the state, which shall be kept by the governor, and used by him officially; and shall be called "The Great Seal of the State of Ohio." (*See Const. 1802, Art. II, § 14.*)

Seal of state, and by whom kept.

See Const. 1802, Art. II, § 14.

1 Debates, 300, 307; 2 Debates, 808, 835, 859, 870.

SECTION 13. All grants and commissions shall be issued in the name, and by the authority, of the state of Ohio; sealed with the great seal; signed by the governor, and countersigned by the secretary of state. (*See Const. 1802, Art. II, § 15.*)

How grants and commissions issued.

See Const. 1802, Art. II, § 15.

1 Debates, 300, 307; 2 Debates, 808, 835, 859, 870.

SECTION 14. No member of congress, or other person holding office under the authority of this state, or of the United States, shall execute the office of governor, except as herein provided. (*See Const. 1802, Art. II, § 13.*)

Who ineligible for governor.

See Const. 1802, Art. II, § 13.

1 Debates, 300, 307; 2 Debates, 288, 808, 835, 859, 870.

SECTION 15. In case of the death, impeachment, resignation, removal, or other disability of the governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor. (*See Const. 1802, Art. II, § 12.*)

Who shall fill his place when vacancy occurs.

See Const. 1802, Art. II, § 12.

The governor not having relinquished the duties of his office in view of a disability recognized by him, and there being no authorized procedure to ascertain that a disability has intervened, it is not competent upon an issue as to the valid enactment of a statute to show that upon the day of its presentation to him and for ten days thereafter he was, by reason of illness, disabled to receive or consider it, so as to give effect to the provision of the fifteenth section of the third article of the constitution, that in case of the disability of the governor the duties of his office shall devolve upon the lieutenant-governor: *Wrede v. Richardson*, 77 O. S. 182.

1 Debates, 300, 307; 2 Debates, 331-333, 808, 835, 859, 870.

SECTION 16. The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of governor, the senate shall choose a president *pro tempore*.

Lieutenant-governor.

1 Debates, 300; 2 Debates, 293, 808, 835, 859, 870.

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If vacancy shall occur while executing the office of governor, who shall act.

SECTION 17. If the lieutenant governor, while executing the office of governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president of the senate shall act as governor, until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives. (*See Const. 1802, Art. II, § 12.*)

See Const. 1802, Art. II, § 12.

1 Debates, 300; 2 Debates, 293, 331-333, 808, 809, 835, 859, 870.

What vacancies governor to fill.

SECTION 18. Should the office of auditor, treasurer, secretary, or attorney general, become vacant, for any of the causes specified in the fifteenth section of this article, the governor shall fill the vacancy until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article.

As to filling vacancies, see Art. XVII, § 2.

Cited: State, ex rel., v. Harmon, 31 O. S. 250; State v. Barbee, 45 O. S. 347; State, ex rel., v. Nash, 66 O. S. 612; State, ex rel., v. Metcalfe, 80 O. S. 244.

The duty and power of making appointment to fill a vacancy in the office of lieutenant-governor is not specially conferred on the executive branch of the government by the constitution, and rests wherever the legislature may vest it. (Art. II, § 27.) Such duty being imposed on the governor by statute it is not an executive function but is a ministerial duty: State, ex rel., v. Nash, 66 O. S. 612.

There is no provision in the constitution for filling a vacancy in the office of lieutenant-governor, except as authorized under Art. II, § 27; and when such vacancy occurs it must in all cases be filled by appointment by the governor as provided in G. C. § 141.

The term of office of such appointee shall be for the unexpired portion of the term and until his successor is elected and qualified as provided in G. C. § 10; and "the first proper election" is the first election at which a lieutenant-governor would have been chosen had no such vacancy occurred: State, ex rel., v. Nash, 66 O. S. 612.

1 Debates, 300, 323-336; 2 Debates, 289, 290, 349, 809, 835, 859, 870.

Compensation.

SECTION 19. The officers mentioned in this article shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected. (*See Const. 1802, Art. I, § 19.*)

See Const. 1802, Art. I, § 19.

Cited: Ward v. Board of Education, 21 O. C. C. 699, 11 O. C. D. 671.

1 Debates, 300, 313-324; 2 Debates, 288, 289, 291, 293, 349, 809, 835, 859, 870.

Officers to report to governor, and when.

SECTION 20. The officers of the executive department, and of the public state institutions shall, at least five days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports, with his message to the general assembly.

Cited: State, ex rel., v. Kilgour, 8 O. N. P. (N.S.) 617, 19 O. D. (N.P.) 670.

Cited by mistake: State, ex rel., v. Carlisle, 3 O. N. P. (N.S.) 544. 2 Debates, 293, 809, 835, 859, 870.

ARTICLE IV.

JUDICIAL.

SECTION 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law. (As amended September 3, 1912.)

In whom judicial power vested.

Vote: "Yes," 264,922; "No," 244,375.

See constitution of 1802, Art. III, § 1.

This section as amended October 9, 1883, 80 v. 382, read as follows: "Sec. 1. [In whom judicial power vested.] The judicial power of the state is vested in a supreme court, circuit courts, courts of common pleas, courts of probate, justices of the peace, and such other courts inferior to the supreme court, as the general assembly may from time to time establish."

Original § 1 read as follows: "Sec. 1. [In whom judicial power vested.] The judicial power of the state shall be vested in a supreme court, in district courts, courts of common pleas, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, in one or more counties, as the general assembly may, from time to time, establish."

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| I. Cited. | III. Constitutionality of statutes. |
| II. What constitutes judicial power. | IV. Supreme court. |
| | V. Inferior courts. |

I. CITED.

Bank, Ex parte, 1 O. S. 432; Steamboat Northern Indiana v. Millikin, 7 O. S. 384; State, ex rel., v. Supervisors of Elections, 80 O. S. 471; Stearns v. Taylor, 1 O. N. P. 23, 1 O. D. (N.P.) 136; Cummings v. Dougherty, 1 O. D. (N.P.) 231; State v. Voris, 8 O. N. P. 16, 10 O. D. (N.P.) 451; Baseball Co. v. Lajoie, 13 O. D. (N.P.) 504; In re Clayton, 13 O. D. (N.P.) 546; Fitzgerald v. Realty and Loan Co., 19 O. D. (N.P.) 399; Bank v. Buckingham's Executors, 46 U. S. (5 How.) 410, 2 O. F. D. 473.

II. WHAT CONSTITUTES JUDICIAL POWER.

The authority conferred on the senate to try contested elections is not judicial power within the meaning of this section, which requires the judicial power of the state to be vested in the courts: State, ex rel., v. Harmon, 31 O. S. 250.

The act of May 4, 1885 (82 v. 236, G. C. § 2169), which authorizes the board of managers of the Ohio penitentiary to allow prisoners to go upon parole, is not in conflict with Art. IV, § 1, of the constitution of Ohio: State, ex rel., v. Peters, 43 O. S. 629.

The power conferred on the governor of the state, by § 1872 (repealed, 96 v. 96, § 231), of the Revised Statutes, to remove any member of the board of police commissioners for official misconduct, is administrative and not judicial: State, ex rel., v. Hawkins, 44 O. S. 98.

The imprisonment of a witness by a notary public for refusing to answer a question is not judicial power and is valid: DeCamp v. Archibald, 50 O. S. 618.

Where no obligation, legal or moral, rests upon a board of education, to pay a claim asserted against it by a private individual, an act of the general assembly, procured by the claimant, commanding such board to levy a tax for its payment, is unconstitutional and void. In such case, if the board of education disputes the facts asserted by the claimant as the foundation of his claim, the general assembly, while it may make inquiry to ascertain, in the first instance, the truth of the facts so asserted, yet it is without authority to conclusively find and recite in the act providing relief, the facts in dispute, so as to estop the board of education from contesting them in a court of justice where the act is sought to be enforced: Board of Education v. State, 51 O. S. 531.

The appointment of annexation commissioners who are to make terms, etc., with the villages annexed, by the court of common pleas, does not violate this section or § 4, Art. IV: State, ex rel., v. Cincinnati, 52 O. S. 419.

An act which confers upon the county recorder the powers among which he is to enter evidence furnished by the agreement of the parties, that a lien has been discharged, or that it has become void by lapse of time, etc., but also to apply rules of evidence, interpret statute of

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limitations, etc., and to make an entry having the same effect, upon the rights of adverse parties as a decree in equity, confers judicial powers and contravenes this section: *State, ex rel., v. Guilbert*, 56 O. S. 575.

The power given a board to regulate the practice of medicine in the state is administrative and not judicial: *France v. State*, 57 O. S. 1.

A state which provides that counties shall be liable for mob violence, does not violate this constitutional provision: *Commissioners v. Church*, 62 O. S. 318 [affirming *Mitchell v. Commissioners*, 20 O. C. C. 660, 10 O. C. D. 801, which reversed *Mitchell v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262; and reversing *Caldwell v. Commissioners*, 15 O. C. C. 167, 8 O. C. D. 56, which affirmed *Caldwell v. Commissioners*, 4 O. N. P. 249, 6 O. D. (N.P.) 367].

The legislature may authorize a county to pay a demand which in good conscience it ought to pay, although the supreme court, without deciding the claim to be illegal, has enjoined the county from paying it: *State, ex rel., v. Gibson*, 4 O. C. C. (N.S.) 433, 16 O. C. D. 784 [affirming *State, ex rel., v. Gibson*, 2 O. N. P. (N.S.) 221, 15 O. D. (N.P.) 73].

A resolution of a board of health providing that all unwholesome milk be destroyed, does not contravene this section: *Kaiser v. Walsh*, 4 O. N. P. (N.S.) 507, 17 O. D. (N.P.) 324.

A statute which provides for the payment of jury commissioners (see G. C. § 11421, et seq.), does not violate this constitutional provision: *Geiger v. State*, 2 O. C. C. (N.S.) 174, 15 O. C. D. 742.

A statute which provides for detaching unplatted farm lands from a municipal corporation (see G. C. § 3578), does not confer legislative power upon the judiciary and is valid: *Grover Hill v. McClure*, 6 O. C. C. (N.S.) 197, 17 O. C. D. 376 [affirmed, without report, *Grover Hill v. McClure*, 72 O. S. 676].

The commission on fees is not a court. It is not intended to be a part of our judicial system. It is rather a part of, and an assistant to, our legislative organ. Hence its finding is not binding on a county officer: *State, ex rel., v. Richardson*, 7 O. L. R. 269.

The decision of a court of another state is conclusive on the courts of this state, in which land involved in the controversy is situated, when the title to the land is only indirectly or incidentally involved in the case determined in the foreign court; and the determination of an Illinois court as to the validity of an antenuptial contract in which the right to dower in Ohio real estate is involved is, therefore, conclusive when pleaded in an action here for the assignment of dower, and the same question between the same parties can not be relitigated here: *Mettler v. Warner*, 11 O. N. P. (N.S.) 363, 21 O. D. (N.P.) 184.

III. CONSTITUTIONALITY OF STATUTES.

It is the right and duty of the judicial tribunals to determine whether a legislative act, drawn in question in a suit pending before them, is opposed to the constitution of the United States, or of this state, and if so found, to treat it as a nullity: *Railroad v. Commissioners*, 1 O. S. 77.

In such case the presumption is always in favor of the validity of the law; and it is only when manifest assumption of authority, and a clear incompatibility between the constitution and the law appear, that the judicial power will refuse to execute it: *Armstrong v. Treasurer*, 10 O. 235; *State, ex rel., v. Dudley*, 1 O. S. 437; *Cass v. Dillon*, 2 O. S. 607; *Hill v. Higdon*, 5 O. S. 243; *Railroad v. Commissioners*, 1 O. S. 77.

While the court should be careful not to extend the powers of government, by farfetched implication, it should be equally careful not to defeat the purpose of the constitution, by a narrow and unreasonable construction: *Cass v. Dillon*, 2 O. S. 607.

A part of the statute may be void for want of conformity to the constitution, and the remainder valid. Whether or not the infirmity that avoids a part affects the entire act, depends upon the connection and dependence on each other of its various provisions. Where they are so inseparably connected in subject-matter, and so relate to each other as to give rise to a presumption that a part would not have been enacted without the whole, the entire act is void. But where no such connection or dependence exists, that part of the statute not itself in conflict with any constitutional provision, is as valid as if independently enacted: *Railway v. Commissioners*, 31 O. S. 338.

As a general rule, one part of an act will not be held unconstitutional and another part constitutional, unless the respective parts are independent of each other. They must stand or fall together: *State, ex rel., v. Commissioners*, 5 O. S. 497.

Parts of an enactment, when capable of separation, may be valid and effectual, when other parts may be void, by reason of repugnancy to a constitutional provision: *Stevens v. State*, 3 O. S. 453.

When the provisions are all parts of a single scheme, having a common object, and are interwoven with and dependent upon one another, if any are unconstitutional all must fall: *Mouroe v. Collins*, 17 O. S. 665.

The rejection of some of the provisions of a statute, for unconstitutionality, will not vary the sense or meaning of its remaining provisions, which are to be construed as well in the light of those rejected as of those which remain: *State v. Dombaugh*, 20 O. S. 167.

"The general and abstract question, whether an act of the legislature be unconstitutional, can not with propriety be presented to a court. The question must be, whether the act furnishes the rule to govern the particular case": *Foster v. Commissioners*, 9 O. S. 540.

Whatever inference might be drawn from the debates in the constitutional convention, every provision of the constitution should be construed agreeably to the import of its terms, as they may be fairly presumed to have been understood by the people whose ratification alone gave validity to the whole instrument: *Lehman v. McBride*, 15 O. S. 573; see, also, *Cass v. Dillon*, 2 O. S. 607; *Bank v. Hines*, 3 O. S. 1; *State, ex rel., v. Kennon*, 7 O. S. 546.

Courts can not nullify an act of legislation on the vague ground that they think it opposed to a general latent spirit, supposed to pervade or underlie the constitution, but which neither its terms nor its implications clearly disclose: *Walker v. Cincinnati*, 21 O. S. 14.

The rule applicable to constitutions, as well as statutes, is that, where the language is clear, there is no room for construction; and the spirit of a provision must be extracted from its words, and not from conjectures aliunde: *Wilcox v. Nolze*, 34 O. S. 520.

IV. SUPREME COURT.

A statute which confers power upon the governor and the attorney-general to hear an appeal from the state medical board does not violate this section: *State v. Ottman*, 4 O. N. P. 195, 6 O. D. (N.P.) 265.

The supreme court of the United States has appellate jurisdiction, in certain cases, over the courts of last resort in the several states: *Bank v. Knoup*, 6 O. S. 342; *Skelly v. Bank*, 9 O. S. 606.

"Now, with respect to the boundary of jurisdiction between the federal and state governments, I do not desire to say anything but this, that when congress has undertaken to enforce, by legislation, a right guaranteed by the constitution itself, and after the power has been recognized by all the highest judicial tribunals of the state of the Union before whom the question has been presented, has been acquiesced in by the country for sixty-six years, and, superadded to these circumstances, the federal tribunal, in cases arising under the constitution, has repeatedly held that congress has the power, it is too late for the judges of the courts of Ohio, upon their private judgment, to deny the power.

"Again, to maintain our right to do so, we must hold: 1. That we have the power under the constitution to determine this question in direct conflict with the settled interpretation of the supreme court of the United States. 2. That we have a right to maintain by the power of every department of the state government, our interpretation of the constitution, and to exact obedience thereto as well from the United States officers as from all the citizens of Ohio. 3. That this power, on our part, we have a right to exercise, when it happens that a majority of our judges are intellectually satisfied, beyond any reasonable doubt upon their minds, from a review of the grounds upon which the federal tribunal and others adopted an interpretation of any provision of the constitution of the United States, that they were mistaken; 4, and lastly, as we must maintain that we have the judicial right to overrule their previous adjudications and enforce obedience to our own, which are in conflict with theirs, so, subsequent decisions on error, overruling ours, not being intellectually satisfactory to us we may, in the exercise of the same judicial right and power, disregard them. For the idea of first asserting the power to overrule their interpretation because we believe it erroneous, and afterward submitting to it, although still believing it erroneous, would be a most undignified and puerile assumption of temporary power, unworthy of a great state or its judicial tribunals, merely creating agitation, and ending in nothing but submission.

"If the individual opinion of every judge is to become the exponent and construction of the constitution of the United States whenever he feels certain that he is right, without regard to the decisions of the highest tribunals of the country, then the individual opinion of every judge is the constitution, not only to himself, but for the time being to the country. This it seems to me is simply discretion without rule, guide, precedent or limitation—unstable, capricious despotism.

"Is there any judicial incident more common than for a judge to deny himself the individual discretion of declaring what he thinks even the unwritten law of the land should be, and hold his judgment

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amenable to the law as it has been decided? And is the constitution to be less stable than the unwritten law? Is a judge to treat the settled interpretation of the constitution, announced to the country in a previous generation, by congress assuming to legislate, sanctioned by an unbroken current of judicial decisions, as of no binding judicial obligation, and to be overthrown by the authority of his individual convictions that the constitution should have a different interpretation? And if a state judge can thus, by his interpretation, alter the constitution when it has received such acquiescence and sanction, what provisions of the constitution, state or national, are safe from change and alteration, under the assumption of such judicial power? They would be written upon sand.

"For myself, I disclaim the exercise of any such judicial discretion":
Ex parte Bushnell, 9 O. S. 77.

V. INFERIOR COURTS.

The legislature is empowered under this section to establish insolvency courts in such counties as it may see fit, and provide for the jurisdiction of probate courts: State, ex rel., v. Bloch, 65 O. S. 370.

The general assembly establishes a court when it enacts that there shall be a court, fixes the number of judges, defines the jurisdiction and prescribes the procedure to be followed therein; to do this requires a two-thirds vote, but a court may be abolished or its jurisdiction or functions modified by a majority vote. The act of May, 1910, creating a municipal court for the city of Cleveland, received a two-thirds vote in the general assembly and was a valid enactment; and inasmuch as the amendatory act of 1911 did not attempt to create a new municipal court, but only modified in some respects a court already established, a majority vote was all that was necessary to render the enactment valid, and the original as so amended authorizes the expenditure of public funds: Mendelson v. Miller, 11 O. N. P. (N.S.) 586.

Under this section the general assembly may create courts which are inferior to the supreme court, and may give to such courts jurisdiction of minor offenses: Wells v. State, 1 O. N. P. (N.S.) 309, 14 O. D. (N.P.) 196.

See Art. IV, § 15.

1 Debates, 430, 551, 584, 585, 606; 2 Debates, 369-371, 384, 385, 389, 391, 392, 396, 401, 402, 483, 484, 668-674, 678-681, 685, 686, 687, 695-698, 809, 835, 859, 870.

The supreme
court.

SECTION 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges, and the judges now in office in that court shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large for such term, not less than six years, as may be prescribed by law, and they shall be elected, and their official term shall begin, at such time as may now or hereafter be fixed by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court

without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court. (As amended September 3, 1912.)

Vote: "Yes," 264,922; "No," 244,375.

See constitution of 1802, Art. III, § 2.

This section as amended October 9, 1883, 80 v. 382, read as follows: "Sec. 2. [The supreme court.] The supreme court shall, until otherwise provide [provided] by law, consist of five judges, a majority of whom competent to sit shall be necessary to form a quorum or to pronounce a decision, except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus and procedendo, and such appellate jurisdiction as may be provided by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large, for such term, not less than five years, as the general assembly may prescribe, and they shall be elected and their official term shall begin at such time as may be fixed by law. In case the general assembly shall increase the number of such judges, the first term of each of such additional judges shall be such, that in each year after their first election, an equal number of judges of the supreme court shall be elected, except in elections to fill vacancies; and whenever the number of such judges shall be increased, the general assembly may authorize such court to organize divisions thereof, not exceeding three, each division to consist of an equal number of judges; for the adjudication of cases, a majority of each division shall constitute a quorum, and such an assignment of the cases to each division may be made as such court may deem expedient, but whenever all the judges of either division hearing a case shall not concur as to the judgment to be rendered therein, or whenever a case shall involve the constitutionality of an act of the general assembly or of an act of congress, it shall be reserved to the whole court for adjudication. The judges of the supreme court in office when this amendment takes effect, shall continue to hold their offices until their successors are elected and qualified."

Original § 2 read as follows: "Sec. 2. [The supreme court.] The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and procedendo, and such appellate jurisdiction as may be provided by law. It shall hold at least one term in each year, at the seat of government, and such other terms, at the seat of government, or elsewhere, as may be provided by law. The judges of the supreme court shall be elected by the electors of the state at large."

For term of office under constitutional amendment, see Art. XVII, §§ 2, 3.

I. Cited.

II. Original jurisdiction.

I. CITED.

Shepler v. Dewey, 1 O. S. 331; State, ex rel., v. Ganson, 58 O. S. 313; Gompf v. Wolfinger, 67 O. S. 144; State, ex rel., v. Pattison, 73 O. S. 305.

II. ORIGINAL JURISDICTION.

The original jurisdiction of the supreme court is limited by the constitution to quo warranto, mandamus, habeas corpus and procedendo: Ex parte Bank, 1 O. S. 432; Kent v. Mahaffy, 2 O. S. 498.

This is the only original jurisdiction granted by this instrument, and it would be wholly inconsistent with, and in a great measure

III. Appellate jurisdiction.

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destructive of, the judicial system it ordains, to suppose that this original jurisdiction can be enlarged by law. It is true there is no express prohibition against it, but none was necessary. The court can only exercise as the constitution itself confers, or authorizes the legislature to grant. It can derive no power elsewhere. The only jurisdiction that the legislature is authorized to confer upon the supreme court is appellate jurisdiction, for it can not be supposed that, by the general grant of legislative power in Art. II, of the constitution, the legislative authority to confer powers upon courts is extended beyond the authority vested in the assembly by the fourth or judicial article: *Kent v. Mahaffy*, 2 O. S. 498.

The power to grant an injunction in a case in the court of common pleas can not constitutionally be conferred on the supreme court: *Kent v. Mahaffy*, 2 O. S. 498; see, also, *Griffith v. Commissioners*, 20 O. 609.

Such power can not be conferred on a single judge of the supreme court sitting at chambers: *Railway v. Hurd*, 17 O. S. 144.

The supreme court has no original jurisdiction, under the constitution, to hear and determine an action brought therein, to enjoin illegal taxes: *Wheeler v. Lynn*, 8 O. S. 393.

The power of the court is limited to the decision of such questions as properly arise, in the due course of law, in a judicial proceeding within its jurisdiction. In a proceeding in quo warranto to try the title of persons, to an office held under an act of the general assembly, when its validity is questioned, it is only such provisions of the act as affect the title to the office that are properly before the court: *State v. Baughman*, 38 O. S. 455.

The extent of the jurisdiction in habeas corpus, as well as the manner of its exercise, is undoubtedly in some measure within legislative control: *Knapp v. Thomas*, 39 O. S. 377.

The court, though without original jurisdiction of suits for injunctions, may, in an original action in quo warranto to determine the right of rival boards to exercise official functions, grant an ancillary injunction to protect those having the prima facie right from interference by other claimants during the pendency of such original action: *State, ex rel., v. Board*, 70 O. S. 341.

For the power of the supreme court to grant an injunction as ancillary to its exercise of appellate jurisdiction, see Art. III, § 2.

General Code § 1707, which expressly recognizes the original jurisdiction of the supreme court in disbarment proceedings, does not contravene this section: *In re Thatcher*, 80 O. S. 492.

The grade crossing act (see G. C. § 8876, et seq.) is not invalid because it contains a separable provision conferring unconstitutional powers on the circuit court, as this provision may be eliminated without effecting the purport and efficiency of the act: *Cincinnati v. Railway*, 19 O. D. (N.P.) 74.

No specific provision for contesting the election of officers having been made by statute, quo warranto will lie to contest their election: *State, ex rel., v. Conser*, 5 O. C. C. (N.S.) 119, 14 O. C. D. 270.

"The supreme court of this state in regular session has no more judicial power or discretion in determining questions which arise upon habeas corpus than a probate judge of the county": *Ex parte Bushnell*, 9 O. S. 77.

III. APPELLATE JURISDICTION.

The appellate jurisdiction of the supreme court extends only to the judgments and decrees of courts created and organized in pursuance of the provisions of the constitution. Therefore the appeal from the decision of the auditor of state, provided in the seventy-fourth section of the act of April 13, 1852 (50 v. 166) "for the assessment and taxation of all property in this state," etc., is in conflict with the provisions of the constitution, from which the jurisdiction of the court is derived and hence can not be had: *Ex parte Bank*, 1 O. S. 432.

A statute authorizing the reservation of a cause by a district court, or the supreme judge sitting therein, for decision by the supreme court, is constitutional: *Chase v. Washburn*, 2 O. S. 98.

By the constitution and the act of February 19, 1852 (50 v. 67), for the organization of the courts, ample power was given to the supreme court to review a judgment of the former supreme court on the circuit: *Groves v. Stone*, 3 O. S. 576.

The district and supreme courts are capable of receiving jurisdiction to review cases decided by themselves: *Longworth v. Sturges*, 4 O. S. 690.

The allowance of an injunction by the supreme court in a case on error, under this section, is not the exercise of original jurisdiction, but of appellate jurisdiction, and is intended only for the protection of the rights of the parties in the suit or matter under review. Where the

judgment, for the reversal of which error is prosecuted, in the supreme court, is pleaded as an estoppel in another suit between the same parties, it is incompetent for this court to enjoin the prosecution of such suit until the case in error is determined: *Yeoman v. Lasley*, 36 O. S. 416.

It is within the appellate jurisdiction of the supreme court to allow a temporary injunction where it appears that defendant is doing, or threatens to do, acts respecting the subject of an action pending, tending to render the judgment ineffectual: *Yeoman v. Lasley*, 36 O. S. 416 [followed and approved, *Wagner v. Railway*, 38 O. S. 32].

The court has not power to decide hypothetical cases: *State v. Baughman*, 38 O. S. 455.

A rule of court can not deprive a party of a right conferred upon him by statute: *Van Ingen v. Berger*, 82 O. S. 255.

If the court reverses a judgment, and then divides upon the question whether the accused should be remanded for retrial or should be discharged, three voting in favor of the discharge, two voting in favor of remanding for retrial and one not voting, he must be remanded for retrial: *Lamprecht v. State*, 84 O. S. 32.

1 Debates, 430, 431, 551, 585-592, 606-608, 611, 616, 622-624, 627, 628, 642, 651-655; 2 Debates, 353-357, 364-368, 384-391, 396, 400-402, 483, 484, 668, 681, 685, 686, 694-698, 809, 835, 859, 860, 870.

SECTION 3. One resident judge of the court of common pleas, and such additional resident judge or judges as may be provided by law, shall be elected in each county of the state by the electors of such county; and as many courts or sessions of the court of common pleas as are necessary, may be held at the same time in any county. Any judge of the court of common pleas may temporarily preside and hold court in any county; and until the general assembly shall make adequate provision therefor, the chief justice of the supreme court of the state shall pass upon the disqualification or disability of any judge of the court of common pleas, and he may assign any judge to any county to hold court therein. (As amended September 3, 1912.)

The common
pleas.

Vote: "Yes," 301,891; "No," 223,287.

See constitution 1802, Art. III, § 3.

The schedule to the twentieth proposition, which included Article IV, §§ 3, 7, 12 and 15, was as follows:

If the foregoing amendment shall be adopted by the electors, the judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall hold their offices for the term for which they were elected and the additional judges provided for herein, shall be elected at the general election in the year 1914; each county shall continue as a part of its existing common pleas district and sub-division thereof, until one resident judge of the court of common pleas is elected and qualified therein. (Adopted September 3, 1912.)

Vote: "Yes," 264,922; "No," 244,375.

Original § 3 read as follows: "Sec. 3. [The common pleas.] The state shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one, of compact territory, and bounded by county lines; and each of said districts, consisting of three or more counties, shall be subdivided into three parts, of compact territory, bounded by county lines, and as nearly equal in population as practicable; in each of which, one judge of the court of common pleas for said district, and residing therein, shall be elected by the electors of said sub-division. Courts of common pleas shall be held, by one or more of these judges, in every county in the district, as often as may be provided by law; and more than one court, or sitting thereof, may be held at the same time in each district. (See Const. 1802, Art. III, § 3.)"

Art. IV, § 4. CONSTITUTION OF THE STATE OF OHIO OF 1851.

I. CITED.

Kelley v. State, 6 O. S. 269; State, ex rel., v. McCarty, 52 O. S. 363; Sipe v. State, ex rel., 86 O. S. 80.

II. COMMON PLEAS DISTRICTS AND JUDGES.

"To construe properly this provision, reference must be had to other parts of the constitution. It certainly can not mean that the number of the districts shall always continue to be nine, since power is given to the general assembly to increase or diminish them (§ 15). It is equally clear that it can not mean that the county limits shall always remain the same, as full power is given to change them and to make new counties (Art. II, § 30). To hold, on the other hand, that the limits of the districts must of necessity enlarge or diminish with the counties named as embraced in them, would be to say that Hamilton county, so reduced by division as to contain but twenty thousand inhabitants, would still constitute a district and be entitled to elect three judges. When taken in connection with the fact that the convention itself proceeded to make the division referred to in this section (see Art. XI, § 12), it is very clear to us that it must be regarded mainly as prescribing a rule for the government of their own action; and when they did act in accordance with it, and fixed the districts by definite boundaries, they must so remain, securing to all the citizens included within them their right of suffrage in such districts until changed by legislative enactment": State, ex rel., v. Dudley, 1 O. S. 437.

The subdivisions can be neither more nor less than three: District Court Case, 34 O. S. 431.

While this section, among other limitations, may prohibit the division of a county, or placing totally disconnected counties in the same subdivision, yet, subject thereto, the territorial form of the new subdivision, and the relative population of each rests within the discretion of the general assembly: State, ex rel., v. Jacobi, 52 O. S. 66.

The judges of the courts of common pleas are judges of their respective districts, and not of the mere subdivision thereof. The subdivision of the districts is for election purposes merely: Harris v. Gest, 4 O. S. 469.

There is nothing in the constitution that forbids the holding of common pleas courts in different counties of a subdivision at the same time: Harris v. Gest, 4 O. S. 469.

For the effect of the change of the boundaries of a county upon the tenure of office of a judge who is thereby left outside of his former district, see State, ex rel., v. Choate, 11 O. 511; State, ex rel., v. Alling, 12 O. 16.

A judge may serve out his term in a district in which he was elected, although he has become a nonresident of the district by the legislature attaching his county to another district, and providing that such judge should serve out his term: Editorial, 36 Bull. 301.

1 Debates, 431, 590-655; 2 Debates, 357, 370, 379-381, 384, 387, 389, 390, 396, 401, 402, 483-485, 681, 686, 695-698, 809, 835, 836, 860, 870.

Their jurisdiction.

SECTION 4. The jurisdiction of the courts of common pleas, and of the judges thereof shall be fixed by law. (*See Const. 1802, Art. III, §§ 3, 4, 5, 6.*)

See Const. 1802, Art. III, §§ 3, 4, 5, 6.

Cited: State v. McGehan, 27 O. S. 280; Lindsay v. Lindsay, 28 O. S. 157; Stearns v. Taylor, 1 O. N. P. 23, 1 O. D. (N.P.) 136.

The jurisdiction of the courts of common pleas of the state is, by force of this section of the constitution, to be fixed by statute: Allen v. Smith, 84 O. S. 283.

The constitution confers no jurisdiction whatever upon the court of common pleas, in either civil or criminal cases. It is made capable of receiving jurisdiction in all such cases, but can exercise none until conferred by law: Stevens v. State, 3 O. S. 453.

General Code § 3578, providing for detaching unplatted farm lands from municipalities, and attaching them to adjacent townships, do not contravene this section: Grover Hill v. McClure, 6 O. C. C. (N.S.) 197, 17 O. C. D. 376 [affirmed, without report, Grover Hill v. McClure, 72 O. S. 676].

See Art. II, § 26, and Art. IV, § 8.

1 Debates, 431, 590; 2 Debates, 357, 370, 396, 401, 402, 483, 485, 685, 686, 695-698, 809, 836, 860, 870.

SECTION 5. [*Repealed October 9, 1883: 80 v. 382.*]

Repealed, October 9, 1883; 80 O. L. 382.

Original § 5 read as follows: "Sec. 5. [District courts.] District courts shall be composed of the judges of the court of common pleas of the respective districts, and one of the judges of the supreme court, any three of whom shall be a quorum, and shall be held in each county therein, at least once in each year; but if it shall be found inexpedient

to hold such court annually, in each county of any district, the general assembly may for, such district, provide that said court shall hold at least three annual sessions therein, in not less than three places, provided, that the general assembly may, by law, authorize the judges of each district to fix the times of holding the courts therein."

The judges of the court of common pleas were by the constitution and laws of this state, judges of the district court, and as such, empowered to exercise its authority: *Hollister v. Judges*, 8 O. S. 201.

A district court held by three or more common pleas judges, without the presence of a judge of the supreme court, was a lawful and constitutional district court: *King v. Safford*, 19 O. S. 587.

Section 7 of the act of March 29, 1856 (53 v. 44), in relation to the time of holding courts, authorizing the judges of a district to appoint special terms for good cause was authorized by this section: *Merchant v. North*, 10 O. S. 251.

The act of 1878 (75 v. 139), "to change the common pleas districts of the state," etc., was unconstitutional, for the reason that common pleas districts can not be constructed with more than three subdivisions, and because the judges to be selected for the district court are by the act permanently exonerated from performing duty in the court of common pleas: *District Court Case*, 34 O. S. 431.

1 Debates, 431, 590-626, 630, 645, 647-651, 655-669; 2 Debates, 357, 368-391, 396, 402, 483-485, 668, 669, 685, 686, 695-698, 809, 836, 860, 870.

SECTION 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges, and until altered by law the circuits in which the circuit courts are now held shall constitute the appellate districts aforesaid. The judges of the circuit courts now residing in their respective districts shall be the judges of the respective courts of appeals in such districts and perform the duties thereof until the expiration of their respective terms of office. Vacancies caused by the expiration of the terms of office of the judges of the courts of appeals shall be filled by the electors of the respective appellate districts in which such vacancies shall arise. Until otherwise provided by law the term of office of such judges shall be six years. Laws may be passed to prescribe the time and mode of such election and to alter the number of districts or the boundaries thereof, but no such change shall abridge the term of any judge then in office. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall continue the work of the respective circuit courts and all pending cases and proceedings in the circuit courts shall proceed to judgment and be determined by the respective courts of appeals, and the supreme court, as now provided by law, and cases brought into said courts of appeals after the taking effect hereof shall be subject to the provisions hereof and the circuit courts shall be merged into, and their work continued by, the courts of appeals. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify or reverse the judgments of the courts of common pleas, superior courts and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in

Courts of
appeals.

Art.IV, § 6. CONSTITUTION OF THE STATE OF OHIO OF 1851.

all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court. No judgment of a court of common pleas, a superior court or other court of record shall be reversed except by the concurrence of all the judges of the court of appeals on the weight of the evidence and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals and he may assign any judge of the courts of appeals to any county to hold court. (As amended September 3, 1912.)

Vote: "Yes," 264,922; "No," 244,375.

Section 6 as amended October 9, 1883, 80 v. 382, read as follows: "Sec. 6. The circuit court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as may be provided by law. Such courts shall be composed of such number of judges as may be provided by law, and shall be held in each county, at least once in each year. The number of circuits, and the boundaries thereof, shall be prescribed by law. Such judges shall be elected in each circuit by the electors thereof, and at such time and for such term as may be prescribed by law, and the same number shall be elected in each circuit. Each judge shall be competent to exercise his judicial powers in any circuit. The general assembly may change, from time to time, the number of boundaries of the circuits. The circuit courts shall be the successors of the district courts, and all cases, judgments, records, and proceedings pending in said district courts, in the several counties of any district, shall be transferred to the circuit courts in the several counties, and be proceeded in as though said district courts had not been abolished, and the district courts shall continue in existence until the election and qualification of the judges of the circuit courts. (As amended October 9, 1883: 80 v. 382.)"

Original § 6 read as follows: "Sec. 6. [Their jurisdiction.] The district court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as may be provided by law."

Cited: Longworth v. Sturges, 4 O. S. 710; Cable v. Alvord, 27 O. S. 654; Building Association v. Insurance Co., 34 O. S. 291; Atwood v. Whipple, 48 O. S. 308; Gompf v. Wolfinger, 67 O. S. 144; State, ex rel., v. Pattison, 73 O. S. 305; In re Thatcher, 80 O. S. 492.

The act of April 16, 1885, authorizing the circuit court to grant further time to file additional bond in cases appealed from the court of common pleas, was held valid: Bank v. McGuffey, 1 O. C. C. 88, 1 O. C. D. 53.

Suit was brought in the court of common pleas, June 18, 1881, to contest the validity of a will; a judgment was rendered December 23, 1895, and an appeal taken to the circuit court. On motion to dismiss the appeal it was held that the circuit court was without jurisdiction: McMaster v. Keller, 1 O. C. C. 476, 1 O. C. D. 266.

An appeal does not lie from an interlocutory order, modifying an injunction: Forgy v. Railroad, 1 O. C. C. 417, 1 O. C. D. 233 [affirmed, without report, Railroad v. Forgy, 30 Bull. 376].

Appeals are not matters of right and legislative requirements as to appeal bonds do not contravene this section: Trader v. Sale, 18 O. C. C. 814, 1 O. C. D. 654.

If the function conferred upon the mayor and judge by the Jones local option law (G. C. § 6140), are of a judicial nature, then G. C. § 6164, giving jurisdiction in error to the circuit court does not contravene this section; otherwise, if such duties are ministerial, as this would confer

original jurisdiction upon the circuit court: *Jones Law v. Johnson*, 9 O. C. C. (N.S.) 147, 19 O. C. D. 134.

If no provision by statute is made for contesting the election of township officers, quo warranto will lie to contest such election: *State, ex rel., v. Conser*, 5 O. C. C. (N.S.) 119, 14 O. C. D. 270.

Under the judicial system established by the constitution of 1851, and the enactments under it, the district court had no jurisdiction, on the election of the defendant or otherwise, to try cases of murder, unless they were pending in the old supreme court, and went to the district court by the transfer provided in the constitution, as pending business (Schedule, § 12): *Parks v. State*, 3 O. S. 101; *Cass v. Dillon*, 2 O. S. 607; *Robbins v. State*, 8 O. S. 131.

The first assignment of error raises the question of the right of the accused to elect to be tried in the district court. The statute, directing the mode of trial in criminal cases (R. S. § 2006) provides, that on the arraignment of a person indicted for a capital offense, and before pleading, he shall be allowed the liberty to elect whether he will be tried in the supreme court of the county, or in the court of common pleas. This statute was enacted under the former constitution of the state, and was applied to the judicial system under that constitution. By the present constitution, the district court was made the successor of the supreme court in each county under the former constitution. But, except as to causes pending, the original jurisdiction of the district court was expressly defined by the constitution, and as it has been interpreted, limited to four writs, thereby excluding the jurisdiction in the trial of cases, the punishment whereof is death, which had been given to the late supreme court. The question whether the district court could take jurisdiction for the trial of such cases, on the election of the accused, pursuant to the statutory provision on that subject, was directly made in the case of *Parks v. State*, wherein the decision of the common pleas, denying to the accused the right to elect to be tried in the district court, was on full consideration affirmed by this court. (*Parks v. State*, 3 O. S. 101.) This unfortunate operation of the present constitution doubtless the result of oversight, is much to be regretted. While the new constitution enlarged the means of obtaining justice in civil cases—providing two courts, and allowing a trial in each, as a matter of right, in contests for property—it narrowed the chance for impartial justice, in causes in which life is at stake, by allowing a trial in such cases only in the common pleas, and taking away the right of the accused, which had existed, to elect to be tried in the higher tribunal, held by several judges removed from the local excitement and prejudice which too often surround the single judge in the trial of capital cases, in the common pleas. But the constitution having thus, by its operation, taken away that important right in the trial of cases involving man's highest earthly interest, the courts have no power to remedy the difficulty by a restoration of the right thus abridged: *Robbins v. State*, 8 O. S. 131.

A statute authorizing the reservation of a cause by a district court, or the supreme judge sitting therein, for decision by the supreme court, is constitutional: *Chase v. Washburn*, 2 O. S. 98.

1 Debates, 431, 590, 594, 595, 618, 619; 2 Debates, 396, 402, 483-485, 668, 685, 686, 695-698, 809, 836, 860, 870.

SECTION 7. There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per centum of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination. Notice of such election shall be given in the same manner as for the elec- Probate courts.

Art.IV, § 7. CONSTITUTION OF THE STATE OF OHIO OF 1851.

tion of county officers. Elections may be had in the same manner for the separation of such courts, when once combined. (As amended September 3, 1912.)

Vote: "Yes," 301,891; "No," 223,287.

For the schedule, see Art. IV, § 3.

Original § 7 read as follows: "Sec. 7. [Probate courts.] There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the voters of the county, who shall hold his office for the term of three years, and shall receive such compensation, payable out of the county treasury, or by fees, or both, as shall be provided by law."

For term of office under constitutional amendment, see Art. XVII, §§ 2, 3.

For the effect of an amendment of this section, upon the terms of probate judges, see *State, ex rel., v. Pattison*, 73 O. S. 305.

See, also, III, in notes to this section.

I. Cited.	III. Term of office.
II. Probate court a court of record.	IV. Compensation.
	V. Jurisdiction.

I. CITED.

Railroad v. O'Harra, 48 O. S. 343; *Hoffman v. Fleming*, 66 O. S. 143; *Thomas v. Evans*, 73 O. S. 140; *Bank v. Telegraph Co.*, 79 O. S. 89; *In re Jones*, 5 O. N. P. 102, 8 O. D. (N.P.) 123.

For a discussion of the history of probate courts of Ohio, see *In re Jones*, 5 O. N. P. 102, 5 O. D. (N.P.) 233.

II. PROBATE COURT A COURT OF RECORD.

The probate courts of this state are, in the fullest sense, courts of record; they belong to the class whose records import absolute verity, that are competent to decide on their own jurisdiction, and to exercise it to final judgment, without setting forth the facts and evidence on which it is rendered: *Shroyer v. Richmond*, 16 O. S. 455.

The probate court of Ohio, being a court of record, under act of congress of 1802 (2 Stat. 155), may issue naturalization papers: *State v. Metzger*, 10 O. N. P. (N.S.) 97, 21 O. D. (N.P.) 72; *Ex parte Smith*, Fed. Cases, 12969, 3 O. F. D. 552.

III. TERM OF OFFICE.

Section 7, of Art. IV, of the constitution, was in force as to all of its provisions until the close of the election on November 7, 1905, and a person who was elected on that day to succeed himself as probate judge, was elected for the term of three years from and after the expiration of the term, which he was already holding: *State, ex rel., v. Pattison*, 73 O. S. 305.

Section 2, of the amendment to the constitution, which is now designated as Art. XVII, providing that the term of office of a probate judge shall be four years, applies only to such persons as shall be elected to such office as provided in § 1, of such amendment. Said amendment is not retroactive. Terms of office existing at and before the adoption of the amendment are not restricted or abolished thereby; but existing terms of office may be extended by the general assembly so as to effect the purpose of § 1, of the amendment. The phrase "existing terms of office" means the terms of office as defined in the constitution and acts of the general assembly as they existed at the time of the proposal of the amendment and of its adoption: *State, ex rel., v. Pattison*, 73 O. S. 305.

The county of Wyandot, on account of a tie vote, failed to elect a probate judge on the second Tuesday of October, 1851, as prescribed by the fourth section of the schedule to this constitution. At the fall election of 1852, K was elected to that office and was commissioned for the term of three years. At the fall election of 1855, he was re-elected, and commissioned for a like term. On the second Tuesday of October, 1857, and while K still remained judge de facto, another election was held for the office and M received the highest number of votes. It was held that K was on each of his said elections, legally commissioned for the term of three years, and that the relator is not therefore entitled to a commission to take effect from the ninth day of February, 1858: *State v. Chase*, 7 O. S. 372. (See schedule to the same effect, § 4, Const. 1851. See Art. IV, § 13n.)

Where a sheriff gave notice of election, but no notice of the fact that there was an unexpired term of thirty days, or whether election was for full term or part, it was held that such election is not void for uncertainty; that such election did not embrace both offices: *State, ex rel., v. Cogswell*, 8 O. S. 620.

IV. COMPENSATION.

A statute (67 v. 36) entitled, "An act limiting the compensation of certain officers therein named does not contravene the clause of this section, which provides that the judge shall receive such compensation, payable out of the county treasury, or by fees, or both, as shall be provided by law: State, ex rel., v. The Judges of the Court of Common Pleas, 21 O. S. 1.

V. JURISDICTION.

An act to establish a court of insolvency in counties containing a city of the first grade, of the first class, and for the relief of the probate court in such counties, does not violate this section: State, ex rel., v. Archibald, 52 O. S. 1.

An act establishing an insolvency court in Cuyahoga county (G. C. § 1620, et seq.), does not contravene this section: Serhaut v. Englebury, 2 O. L. R. 512, 50 Bull. 68 [affirmed, without report, Serhant v. Englebury, 76 O. S. 565].

1 Debates, 431, 551, 591, 593, 602, 623, 669, 673, 675, 676; 2 Debates, 379, 390, 396-402, 483-485, 681, 682, 685, 686, 695-698, 809, 836, 860, 870.

SECTION 8. The probate court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators, and guardians, and such jurisdiction in habeas corpus, the issuing of marriage licenses and for the sale of land by executors, administrators, and guardians, and such other jurisdiction, in any county or counties, as may be provided by law. Their jurisdiction.

I. Cited.**II. Probate and testamentary matters.****III. Appointment of administrators and guardians.****IV. Settlement of accounts.****V. Other jurisdiction.****VI. In any county or counties.****I. CITED.**

Woodmansie v. Woodmansie, 32 O. S. 18; Railroad v. Belle Centre, 48 O. S. 273; Hoffman v. Fleming, 66 O. S. 143; McMahon v. Ambach Co., 79 O. S. 103; Reed v. Brown, 10 O. C. C. 49, 6 O. C. D. 15 [affirmed, Brown v. Reed, 56 O. S. 264]; In re Assignment of Jones, 5 O. N. P. 102, 5 O. D. (N.P.) 233; Norris v. Casper, 8 O. N. P. 475, 11 O. D. (N.P.) 616; Kislingbery v. Donovan, 8 O. N. P. 476, 11 O. D. (N.P.) 535; Knight v. Johnson, 1 O. N. P. (N.S.) 260, 13 O. D. (N.P.) 715; Haynes v. Hillsboro, 3 O. N. P. (N.S.) 17, 50 Bull. 236; Smith v. Telegraph Co., 7 O. N. P. (N.S.) 609, 19 O. D. (N.P.) 537.

II. PROBATE AND TESTAMENTARY MATTERS.

The constitution contemplates that original jurisdiction in probate and testamentary matters should be confined to the probate court, but it in no wise limits the jurisdiction in probate and testamentary matters exclusively to that court, so as to cut off appeal or error therefrom: In re Sells Estate, 8 O. N. P. (N.S.) 175, 19 O. D. (N.P.) 567.

III. APPOINTMENT OF ADMINISTRATORS AND GUARDIANS.

The act of January 9, 1871 (68 O. L. 6), conferring jurisdiction upon courts of common pleas to appoint guardians of the property of persons incapable of taking care of and preserving their property, by reason of intemperance and habitual drunkenness, is not in conflict with the provision of Art. IV, § 8, of this constitution, defining the jurisdiction of probate courts: Hagany v. Cohnen, 29 O. S. 82.

This section does not authorize the legislature to provide by statute that trust companies may act as executors or administrators in certain counties of the state; since by virtue of Art. II, § 26, such a statute being of a general nature must have a uniform operation throughout the state: Schumacher v. McCallip, 69 O. S. 500.

The appeal to the court of common pleas from the judgment and order of the probate court refusing to appoint a guardian for one alleged to be an imbecile and dismissing the application for such appointment, authorized by G. C. § 10989, transfers to the court of common pleas the entire cause, and empowers that court, upon finding the person to be an imbecile and that a guardian is needed, to appoint a guardian. Upon such appointment being made it is the duty of the clerk of the court of common pleas to certify, by a duly authenticated transcript, the order, judgment, and proceedings to the probate court: In re Oliver, 77 O. S. 474.

Art. IV, § 8. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Exclusive original jurisdiction to remove a guardian being, by G. C. § 10492, vested in the probate court, the court of common pleas is without original jurisdiction to entertain an application to remove a guardian. Where an application for such removal is made in the first instance to the court of common pleas, it is not error for that court to sustain a general demurrer to such application and dismiss the proceeding: *In re Oliver*, 77 O. S. 474.

The general power of appointment of administrators given by this section inheres in the probate court until the administrator has fully performed all the duties enjoined upon him by law in the performance of his trust: *Chamberlain v. Stecher*, 78 O. S. 271.

"The probate court is a court of record and its jurisdiction in matters testamentary and in the appointment of administrators and guardians has been broadly given by the constitution of this state, Art. IV, §§ 7 and 8. The jurisdiction is plenary, and it may well be doubted whether the legislature, if it chose to do so, could in any respect limit it": *Bank v. Telegraph Co.*, 79 O. S. 89. Accordingly, the appointment of a trust company as executor can not be attacked collaterally in an action by such executor to recover damages for injury to the property of the decedent.

IV. SETTLEMENT OF ACCOUNTS.

There exists no constitutional impediment to investing the probate court with power upon final settlement with the administrator of an intestate estate, to order distribution of the money remaining in his hands to the persons entitled thereto: *McLaughlin v. McLaughlin*, 4 O. S. 508.

After the expiration of the eight months allowed by G. C. § 10834, for filing exceptions, when the account is settled in the absence of a person interested and without actual notice to him, the judgment of a probate court settling the final account of an executor or an administrator becomes absolute and conclusive and can not be attacked except for fraud of the prevailing party: *Crawford v. Zeigler*, 84 O. S. 224.

Notwithstanding this section, the court of common pleas of the proper county, under existing laws, has jurisdiction of a civil action brought to determine and enforce the right to contribution given by statute to a child born after the execution of the will of its parent: *McGarry v. Smith*, 22 O. S. 190.

By this section the probate court has a fixed constitutional jurisdiction over the settlement of the accounts of guardians, and is capable in any county of the state of exercising such other jurisdiction as may be conferred by law: *Lindsay v. Lindsay*, 28 O. S. 157.

The proceeding of an administrator to sell the land of the deceased is a civil action. The probate court has jurisdiction to try questions of facts therein and afford a jury trial if case demands it: *Doan v. Biteley*, 49 O. S. 588.

The probate court is not expressly vested with jurisdiction to order an administrator, against his objection, specifically to perform an agreement alleged to have been made by his intestate; and such an order, so made, merely on motion of a party to the agreement, and not necessary to effectuate some power expressly conferred is *coram non iudice*, and void: *Jones v. Green*, 21 O. C. C. 96, 11 O. C. D. 548.

While the probate court has authority to direct and control the conduct of executors and administrators with reference to the trusts they are called upon to administer, it is without authority to go beyond such direction and control as is conferred by law, or to require the performance of an act which is outside of or beyond a legal administration of the estate: *In re Estate of Ferguson*, 6 O. N. P. (N.S.) 417, 18 O. D. (N.P.) 374.

This section does not limit the jurisdiction in probate and testamentary matters exclusively, so as to cut off appeal or error therefrom: *In re Estate of Sells*, 8 O. N. P. (N.S.) 175, 19 O. D. (N.P.) 567.

V. OTHER JURISDICTION.

General Code § 13451 which authorizes the probate court to try an issue on a plea other than that of guilty, if defendant does not demand trial by jury is valid and constitutional: *Dailey v. State*, 4 O. S. 57.

Under this section and § 7, the probate court has capacity for receiving jurisdiction as great as that of the court of common pleas: *Railroad v. O'Harra*, 48 O. S. 343.

Jurisdiction may be conferred upon probate courts to inquire into and determine damages, caused by improvements: *Toledo v. Preston*, 50 O. S. 361.

A statute which authorizes the probate court to determine the method in which a telegraph and telephone company may make use of the streets of a municipal corporation, if such company and such municipal corporation can not agree, is valid and constitutional: *Zanesville v. Telephone Co.*, 64 O. S. 67 [reversing on rehearing, *Zanesville v. Telephone Co.*, 63 O. S. 442].

By G. C. §§ 11092, 11093, et seq., jurisdiction on assignments for the benefit of creditors is vested exclusively in the probate court: *Wambaugh v. Insurance Co.*, 59 O. S. 228; see, to the same effect, *In re Jones*, 5 O. N. P. 102, 8 O. D. (N.P.) 123.

The "merits of the proceedings" with reference to an election held under the Beal municipal local option law, which the probate court is given final jurisdiction to hear and determine, includes all matters touching or in any way relating to and affecting the question whether or not the election has been held in conformity with the statute authorizing such an election, and prescribing conditions under which it may be held, the manner of ordering, giving of notice, conducting, etc. Such grant of authority does not include power on the part of the probate judge to hear and determine whether the law itself is constitutional or otherwise; and where a probate judge goes further, and makes a finding that the act itself is void on constitutional grounds, his action is *coram non judice* as to that finding, and the case, stands as it would have stood had the finding been limited to matters as to which the probate judge had jurisdiction: *Wells v. State*, 1 O. N. P. (N.S.) 309, 14 O. D. (N.P.) 196.

There is nothing in this section preventing the establishing of a court of insolvency for Cuyahoga county: *Serhaut v. Englebury*, 2 O. L. R. 512, 50 Bull. 68 [affirmed, without report, *Serhant v. Englebury*, 76 O. S. 565].

The legislature may establish a court of insolvency in Hamilton county, and may relieve the probate court of cases of that sort: *State, ex rel., v. Archibald*, 52 O. S. 1.

VI. IN ANY COUNTY OR COUNTIES.

The jurisdiction may be extended to all counties in the state by a general enactment. "The words 'in any county or counties' were probably used rather as enabling than restrictive language, and were designed to permit the general assembly—notwithstanding the provision of Art. II, § 26, requiring all laws of a general nature to have a uniform operation throughout the state—in its discretion to confer upon the probate court more extended powers in some counties than in others. Upon the opposite construction, a power to confer the jurisdiction in one county by a local enactment is a power to confer it in all the counties in the same manner; which brings us to the absurd conclusion that the legislature is competent to do by ninety laws what it is incompetent to do by one": *Giesy v. Railway*, 4 O. S. 308.

"A jurisdiction may be given to the probate court in one county which is not conferred in another; but this express exception relates only the extent of the jurisdiction of the probate court. The whole object of the section is to define the limits of its jurisdiction; it treats of nothing else, and does not once name the courts of common pleas. Nor does it follow as a necessary conclusion that because the jurisdiction of the probate court may be more extensive in one county than in another, the jurisdiction of the courts of common pleas must also differ in extent. The latter may be uniform and the former not. The probate court may, in some counties, possess a jurisdiction concurrent with the common pleas, which is denied to it in others": *Kelley v. State*, 6 O. S. 269.

An act to establish a court of insolvency in counties containing a city of first grade of first class, and for the relief of the probate court in such counties, does not violate this section: *State, ex rel., v. Archibald*, 52 O. S. 1.

The clause, "and any other jurisdiction in any county or counties, as may be provided by law," is enabling and was intended to give the legislative authority which otherwise would be restricted by Art. II, § 26; *Pearson v. Stephens*, 13 O. C. C. 49, 7 O. C. D. 122 [reversed, on other grounds, in *Pearson v. Stephens*, 56 O. S. 126].

The legislature under the terms of this section, has authority to give the probate court of Butler county concurrent jurisdiction with the court of common pleas, in certain cases: *Gill v. Sealbridge*, 17 O. C. C. 390, 9 O. C. D. 554.

A statute which gives certain jurisdiction to the probate court of Miami county, is valid by virtue of this section: *Oberer v. State*, 8 O. C. C. (N.S.) 93, 18 O. C. D. 620; see, also, *Bank v. Reinhard*, 13 O. D. (N.P.) 630.

1 Debates, 431, 551, 591, 593, 602, 609-612, 616, 622, 623, 625, 654, 669-695; 2 Debates, 357-371, 379, 384, 390, 396, 398-402, 483-485, 681-686, 695-698, 809, 836, 860, 870.

SECTION 9. A competent number of justices of the peace shall be elected by the electors in each township in the several counties, until otherwise provided by law. Their term of office

Justices of the peace.

Art.IV, § 9. CONSTITUTION OF THE STATE OF OHIO OF 1851.

shall be for four years and their powers and duties shall be regulated by law: provided that no justice of the peace shall be elected in any township in which a court, other than a mayor's court, is, or may hereafter be, maintained with the jurisdiction of all causes of which justices of the peace have jurisdiction, and no justice of the peace shall have, or exercise jurisdiction in such township.

SCHEDULE.

If the amendment to article IV, sections 1, 2 and 6, be adopted by the electors of this state and become a part of the constitution, then section 9 of article IV of the constitution is repealed, and the foregoing amendment, if adopted, shall be of no effect. (As amended September 3, 1912.)

Vote: "Yes," 264,832; "No," 252,936.

The amendment to Art. IV, §§ 1, 2 and 6, was adopted. See note to such sections.

Original § 9 read as follows: "Sec. 9. [Justices of the peace.] A competent number of justices of the peace shall be elected, by the electors, in each township in the several counties. Their term of office shall be three years, and their powers and duties shall be regulated by law. (See Const. 1802, Art. III, § 11.)"

See Const. 1802, Art. III, § 11.

For term of office under constitutional amendment, see Art. XVII, §§ 2, 3.

I. Cited.

II. Terms of office.

I. CITED.

Derby v. Heath, 59 O. S. 54; Watkins v. Schlecter, 7 O. N. P. 42, 9 O. D. (N.P.) 590; Ex rel. Michael, 2 O. L. R. 467; K. B. Company v. Brenner, 21 O. D. (N.P.) 668.

II. TERMS OF OFFICE.

The term of office of justice of peace is limited to three years from the date of his commission: Bushnell v. Koon, 8 O. C. C. (N.S.) 163, 18 O. C. D. 367 [affirmed, without report, Koon v. Bushnell, 71 O. S. 521].

"The predecessors of these defendants were elected for a constitutional term of three years, at a spring election in April, 1902, and their term could not be curtailed by reason of the change in the time of election of justices of the peace from spring to fall. We hold, therefore, that the defendants' terms of office began not in November, 1904, but in April, 1905, and continued thereafter under the provisions of Art. IV, § 9, of the constitution, as it then existed, and under Art. XVII, § 3, of the constitution, as since amended, for the full term of three years, for which they were elected, to-wit, until April, 1908, and until their successors are elected and qualified, as provided by law": State, ex rel., v. Brown, 11 O. C. C. (N.S.) 107.

III. JURISDICTION AND POWERS.

Under this provision, the general assembly may confer upon justices of the peace such general and special jurisdiction not in conflict with the exclusive original jurisdiction vested by the constitution and laws in other courts, as it shall think proper and deem wise: Trustees v. Tuttle, 30 O. S. 62.

The powers and duties of the justices of the peace in this state are regulated solely by statute: Bowers v. Pomeroy, 21 O. S. 184.

The jurisdiction of justice of the peace is entirely statutory. Their jurisdiction over the subject-matter of an action is conferred by statute and can be derived from no other source, nor in any other manner: Nicholson v. Roberts, 4 O. N. P. 43, 6 O. D. (N.P.) 233.

This section provides for office of justice of the peace, but leaves his powers and duties entirely to the control of the legislature: Ex parte Boswell, 3 O. N. P. (N.S.) 555, 16 O. D. (N.P.) 250.

A justice who is elected in a township a part of which is afterwards annexed to another township, and who lives in the annexed part, acquires jurisdiction in civil cases in the new township as it existed after such change or boundary: Pfeiffer v. Green, 3 O. N. P. 156, 4 O. D. (N.P.) 239.

In Ohio the justice's court is a constitutional tribunal and except that as a limited one, it is to be strictly held within the limits of the prescribed jurisdiction, and its records must affirmatively show the facts establishing jurisdiction, there is no difference between courts of inferior and general jurisdiction: *Righter v. Thornton*, 6 O. D. (N.P.) 8, 30 Bull. 32.

1 Debates, 431, 551, 593, 654; 2 Debates, 370, 384, 396, 401, 402, 483-485, 685, 686, 695-698, 809, 836, 860, 870.

SECTION 10. All judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created, but not for a longer term of office than five years. Other judges.

For term of office under constitutional amendment, see Art. XVII, §§ 2, 3.

Cited: *Ex parte Bank*, 1 O. S. 432; *In re Derrick*, 11 O. C. C. (N.S.) 518, 21 O. C. D. 282.

This section applies to a judicial district for election purposes, and does not affect the matter of jurisdiction power to provide, which is specifically given to the general assembly by § 18: *Carey v. State*, 70 O. S. 121; see, also, *Steamboat v. Milliken*, 7 O. S. 383; *State v. Peters*, 67 O. S. 494.

The statute which confers upon the mayor of a municipal corporation jurisdiction in cases of misdemeanor (see G. C. § 4536), is not in violation of this section: *Kubach v. State*, 2 O. C. C. (N.S.) 133, 15 O. C. D. 488.

Acts of de facto officers can not be attacked collaterally: *State v. Krause*, 1 O. N. P. 91, 1 O. D. (N.P.) 122; *Ex parte Strang*, 21 O. S. 610.

1 Debates, 431, 551, 676-707; 2 Debates, 359, 360, 396, 402, 484, 685, 686, 695-698, 809, 836, 860, 870.

SECTION 11. [*Repealed October 9, 1883; 80 v. 382.*]

Repealed October 9, 1883; 80 O. L. 382.

Original § 11 read as follows: "Sec. 11. [Classification of supreme judges.] The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold for the term of one year, one for two years, one for three years, one for four years, and one for five years; and, at all subsequent elections, the term of each of said judges shall be for five years."

1 Debates, 431, 551, 719, 720; 2 Debates, 131-133, 360, 396, 400, 402, 483-485, 684-686, 695-698, 809, 836, 860, 870.

SECTION 12. The judges of the courts of common pleas shall, while in office, reside in the county for which they are elected; and their term of office shall be for six years. (As amended September 3, 1912.) Common pleas judges: their term of office and residence.

Vote: "Yes," 301,891; "No," 223,287.

For the schedule, see Art. IV, § 3.

Original § 12 read as follows: "Sec. 12. [Common pleas judges: their term of office and residence.] The judges of the courts of common pleas shall, while in office, reside in the district for which they are elected; and their term of office shall be for five years. (See Const. 1802, Art. III, §§ 3, 8.)"

See Const. 1802, Art. III, § 3.

For term of office under constitutional amendment, see Art. XVII, §§ 2, 3.

Cited: *Pfeiffer v. Green*, 3 O. N. P. 156, 4 O. D. (N.P.) 239; *Insurance Co. v. Packet Co.*, 6 O. N. P. 173, 7 O. D. (N.P.) 571.

The legislature may change the boundaries of a county, and when such change places an associate judge within limits of another county, who does not, within a reasonable time, remove into the limits of the county for which he was appointed, he forfeits his office (Const. 1802): *State, ex rel., v. Choate*, 11 O. 511.

The general assembly can neither lengthen nor shorten the term of a common pleas judge: *State, ex rel., v. Handy*, 51 O. S. 204.

1 Debates, 431; 2 Debates, 133, 360, 396, 402, 483-485, 685, 686, 695-698, 809, 836, 860, 870.

Art. IV, § 13. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Vacancies, how filled.

SECTION 13. In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty days after the vacancy shall have happened.

Cited: *State v. Neibling*, 6 O. S. 40; *Ex parte Strang*, 21 O. S. 610; *State, ex rel., v. Pattison*, 73 O. S. 305; *Harte v. Bode*, 4 O. N. P. 421, 7 O. D. (N.P.) 74.

Where a vacancy occurred in the office of probate judge of Pickaway county more than thirty days before the next annual election, at which a probate judge for the constitutional term was also to be chosen, and the sheriff, in his proclamation giving notice of said election, failed to give notice that a probate judge would be chosen to fill the unexpired term, but merely gave notice that one probate judge for said county would be chosen, without more, and the voters cast their ballots for probate judge without indicating whether for the unexpired term or for the constitutional term: Held, 1. That, under the constitution and laws of this state, such election of probate judge was not void for uncertainty. 2. That such election did not embrace both the offices which should have been voted for at that time. 2. That the judge thus elected must, by reasonable intendment, be held to have been elected for the full, and not for the unexpired term: *State, ex rel., v. Cogswell*, 8 O. S. 620.

The term of office of a judge elected to fill a vacancy is limited to the unexpired portion of the regular term in which such vacancy occurs; and a commission assuming to confer official authority for a longer term is, as to the excess, inoperative: *Scarff v. Foster*, 15 O. S. 137.

Where a vacancy is about to occur in the office of probate judge, by reason of the expiration of the term of an incumbent of that office, and the sheriff, in pursuance of the statute, in due time prior to the day for the regular election, publishes his proclamation giving notice of such election, and enumerating therein all the state and county offices to be filled at such election, except the office of probate judge, in respect to which the proclamation is silent; and, by reason of such malfeasance of the sheriff, the great body of the electors of such county are misled, and have no notice, either official, or in fact, of an election to fill the office of probate judge; but, nevertheless, a small number of the electors of the county, less than one-fourth of the whole number of voters at that election, cast their votes for a single candidate, and no votes are cast for any other, such attempted election is irregular and invalid: *Foster v. Scarff*, 15 O. S. 532.

From this section the implication is manifest that the constitution intends that in respect to elections to fill vacancies in the office of judge, at least thirty days' time for notice of the election shall be afforded. * * * We do not intend to hold, nor are we of the opinion, that the notice by proclamation, as prescribed by law, is per se and in all supposable cases, necessary to the validity of an election. If such were the law, it would be in the power of a ministerial officer, by his malfeasance, always to prevent a legal election. We have no doubt that where an election is held in other respects as prescribed by law, and notice in fact of the election is brought home to the great body of the electors, though derived through means other than the proclamation which the law prescribes, such election would be valid. But where, as in this case, there was no notice, either by official proclamation, or in fact, and it is obvious that the great body of the electors were misled, for want of the official proclamation, its absence becomes such an irregularity as to prevent an actual choice by the electors, prevents an actual election, in the primary sense of that word, and renders invalid any semblance of an election, which may have been attempted by a few, and which must operate, if it be allowed to operate at all, as a surprise and fraud upon the rights of the many: *Foster v. Scarff*, 15 O. S. 532.

Whether the power of the general assembly to create a police court, and to provide for the election of a judge therefor, is limited by § 13, Art. IV, of the constitution—quaere: *State, ex rel., v. Anderson*, 44 O. S. 247.

It is to be observed that Art. IV, § 13, of the constitution, does not authorize the successor of a judge whose office becomes vacant before the expiration of his term, to be elected at the first election that occurs more than thirty days after the vacancy happens. It certainly would have done so, by omitting the word "annual," if the sole or dominating purpose was to so limit the executive patronage

in filling vacancies that persons appointed thereto should hold only until it was possible to elect the successors. While a primary object of the constitution undoubtedly was to make the office of judge elective by the people, the limitation upon the power of executive appointments to vacancies was intended to be reasonable, and to some practical end. The same intention and policy is manifest in the provisions of Art. III, § 18, investing the governor with the like power of filling vacancies in the office of auditor, treasurer, secretary, and attorney-general, and requiring all such vacancies to be filled at the first general election that occurs more than thirty days after they shall happen. It is worthy of notice that in this latter section, the first general election is the period fixed for filling vacancies, while in Art. IV, § 13, it is the first annual election. It can not be assumed that this difference in phraseology was accidental, or that the terms are used in the same sense. The presumption is, that the language was selected with care, and used with accuracy; and that if it had been intended to designate the same election in the two sections, the same descriptive terms would have been employed in each. The fact that in the two sections of the same instrument relating to the kindred subjects, the elections at which vacancies are to be filled are described in different language, raises the inference that they are, or may be, different elections. As has been seen, vacancies occurring in the offices named in Art. III, § 18, are to be filled at the general election, and can be at no other; and this obviously was made so, because that is the one prescribed by the constitution for the regular election of those officers. But one purpose can therefore be perceived for the difference in the phraseology of the two sections; and that is, that inasmuch as the times for the election of judges, was left by the constitution to the discretion of the legislature, and might in some instances at least, be fixed by statute for periods other than those of the general election, it was intended to provide for filling vacancies in that office, at the first annual elections at the periods so fixed, that occur more than thirty days after the vacancies shall happen; thus applying to appointments by the governor under each section, the same reasonable rule and limitation. In the case of all elective officers, the necessity for the existence of some continuous authority to fill vacancies temporarily, in order that the performance of their duties may not be too seriously interrupted, and the inconvenience and inadequacy of any system, by which such power could be exercised by the people through the medium of popular elections, except at regular periods, led, no doubt, to the adoption of both sections; the design of each being, as we conceive, to effectuate the same general policy of uniformity in filling vacancies already alluded to. It is said that the general election is an annual election, because it occurs regularly every year at the same stated time; and where it is the next election that occurs more than thirty days after a vacancy has happened in the office of any judge, it becomes the first annual election so occurring and the successor must therefore be chosen at that election. Equally, and in the same sense, is the April election an annual election, for it occurs regularly every year at stated times; and it would follow, that where it is the next election that occurs more than thirty days after such vacancy happens, that would, for the same reason, become the first annual election, and the one at which the successor must be chosen. If this is the meaning to be given to the term annual election, then, although judges of the supreme court, judges of the probate court and many judges of the court of common pleas, are regularly elected at the general election, their successors, where vacancies happen after that election, and more than thirty days before the ensuing April election, would have to be elected at the latter. Such has not been the generally accepted interpretation: *State v. Barbee*, 45 O. S. 347.

Article XVII, of the constitution, adopted November 7, 1905, does not expressly repeal or abrogate § 13, of Art. IV, of the constitution, nor is it in conflict therewith; and, applying to the construction of the former section the established rule that repeals by implication are not favored, it follows that the clause of § 13, which provides that where "the office of any judge becomes vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified," remains in force: *State, ex rel., v. Metcalfe*, 80 O. S. 244.

The death of a person elected to an office before he qualifies does not create a vacancy, where the constitution provides that an incumbent in an office shall hold for his term and until the election and qualification of a successor: *State, ex rel., v. Metcalfe*, 80 O. S. 244.

The acts of a de facto officer can not be attacked collaterally: *State v. Krause*, 1 O. N. P. 91, 1 O. D. (N.P.) 122.

This section does not render invalid a statute which authorizes the mayor to appoint a temporary police judge when the police judge

Art. IV, § 14. CONSTITUTION OF THE STATE OF OHIO OF 1851.

is temporarily absent from the city (see G. C. § 4569): *Brown v. Toledo*, 7 O. N. P. 435, 5 O. D. (N.P.) 210.

1 Debates, 431, 551; 2 Debates, 333, 360, 396, 400, 402, 483-485, 685, 686, 695-698, 809, 836, 860, 870.

Compensation of judges: ineligible to other offices.

SECTION 14. The judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. All votes for either of them, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void. (*See Const. 1802, Art. III, § 8.*)

See Const. 1802, Art. III, § 8.

Cited: *Ward v. Board of Education*, 21 O. C. C. 699, 11 O. C. D. 671.

The authority of determining the number and compensation of assistants to various county officers, conferred by the act of April 6, 1870 (67 v. 36), and the supplemental act of April 12, 1871 (68 v. 58), on the judges of the court of common pleas, does not invest them with a new office, but merely authorizes them to perform additional duties as judges: *State v. Judges*, 21 O. S. 1.

The act of May 4, 1869 (66 v. 80), "relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants," is not opposed to this section. The duty it imposes upon the court—the appointment of trustees of a railroad to be constructed by a municipal corporation—is of a judicial character. Neither does it create a new office, in imposing this duty on the judges of the court, but simply annexes a new duty to an existing office: *Walker v. Cincinnati*, 21 O. S. 14.

If the position of supervising judge be an office, how, under the constitution (§ 14, Art. IV), which provides that judges of the court of common pleas shall not "hold any other office of profit or trust under the authority of this state or of the United States," could a judge of the court of common pleas be eligible to it? Surely if an office at all, it is an office of trust. This court is not at liberty to assume that the lawmakers were ignorant of this constitutional inhibition, nor that they intended to disregard it. Nor can we assume that the general assembly intentionally committed the folly of creating an office by the same act limiting its occupancy to certain persons, no one of whom would be eligible to fill it, but in fact all such persons distinctly, and by constitutional provision, are prohibited from filling it. And yet this is exactly what the general assembly did do, if the position of supervising judge is an office: *State, ex rel., v. Hunt*, 84 O. S. 143.

1 Debates, 431, 551; 2 Debates, 133, 134, 360-364, 396, 397, 400, 402, 483-485, 685, 686, 695-698, 809, 836, 837, 860, 870.

Number of judges may be increased or diminished, districts altered, and other courts established.

SECTION 15. Laws may be passed to increase or diminish the number of judges of the supreme court, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county, and to establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition or diminution shall vacate the office of any judge; and any existing court heretofore created by law shall continue in existence until otherwise provided. (As amended September 3, 1912.)

Vote: "Yes," 301,891; "No," 223,287.

For the schedule, see Art. IV, § 3.

Original § 15 read as follows: "Sec. 15. [Number of judges may be increased or diminished, districts altered and other courts established.] The general assembly may increase, or diminish, the number of the judges of the supreme court, the number of the districts of the court of common pleas, the number of judges in any district, change the districts, or the subdivisions thereof, or establish other courts, whenever two-thirds of the members elected to each house shall concur therein; but no such change, addition, or diminution, shall vacate the office of any judge."

I. Cited.
II. Change of number of judges and districts.

III. Two-thirds vote.
IV. Change vacating the office of judge.

I. CITED.

State, ex rel., v. Dudley, 1 O. S. 437; State, ex rel., v. McCarty, 52 O. S. 363; In re Derrick, 11 O. C. C. (N.S.) 518, 21 O. C. D. 282.

II. CHANGE OF NUMBER OF JUDGES AND DISTRICTS.

It is perfectly clear that, upon the creation of any additional court by the legislature, the judicial officer must be elected as such, by the electors of the district for which such court is created; and it is not within the competency of the legislature to clothe with judicial power any office or person not elected as a judge: Ex parte Bank, 1 O. S. 432.

Whether the districts are increased or diminished in number, they must nevertheless be constituted in accordance with the requirements of § 3, of the judicial (Article IV): District Court Case, 34 O. S. 431.

In exercising the power to provide for the election of an additional common pleas judge, the general assembly may provide for the election of a successor to such judge; but in the absence of words clearly indicating such purpose, no such election is authorized: State v. Brown, 38 O. S. 344.

The power to change judicial districts rests with the legislature, and while § 3 may prevent the division of a county, or placing entirely disconnected counties in the same subdivision, the territorial form and population is discretionary: State, ex rel., v. Jacobs, 52 O. S. 66.

III. TWO-THIRDS VOTE.

The act of May 3, 1852 (50 v. 223), "to provide for the organization of cities and incorporated villages," conferring on mayors of cities of the second class "all the jurisdiction and powers of a justice of the peace in all matters civil or criminal," provided the same was passed by a vote of two-thirds of all the members elected to each house of the general assembly, is not in contravention of this section of the constitution: Steamboat v. Milliken, 7 O. S. 383.

Such concurrence will, in absence of all showing to the contrary, be presumed: Steamboat v. Milliken, 7 O. S. 383; Miller v. State, 3 O. S. 475.

The act of March 21, 1887, to repeal § 1, of an act, to change the subdivisions in the second judicial district and to provide for the election of an additional judge in the first subdivision, passed March 13, 1868, not having been passed by a two-thirds vote of each house, is invalid: State v. Kinninger, 46 O. S. 570.

An act extending the jurisdiction of the police court to hear and finally determine all misdemeanors committed within the limits of the county in which the court is situate, which is not enacted by a two-thirds vote of the members of each house, is void: State v. Voris, 8 O. N. P. 16, 10 O. D. (N.P.) 451.

The court will take judicial notice whether a statute of this sort received a sufficient number of votes in the general assembly to pass the same: Backenstoe v. State, 2 O. N. P. (N.S.) 178, 14 O. D. (N.P.) 580.

The general assembly establishes a court when it enacts that there shall be a court, fixes the number of judges, defines the jurisdiction and prescribes the procedure to be followed therein; to do this requires a two-thirds vote, but a court may be abolished or its jurisdiction or functions modified by a majority vote.

The act of May, 1910, creating a municipal court for the city of Cleveland, received a two-thirds vote in the general assembly and was a valid enactment; and inasmuch as the amendatory act of 1911 does not attempt to create a new municipal court, but only modifies in some respects a court already established, a majority vote was all that was necessary to render the enactment valid, and the original as so amended authorizes the expenditure of public funds: Mendelson v. Miller, 11 O. N. P. (N.S.) 586.

IV. CHANGE VACATING THE OFFICE OF JUDGE.

This provision means the office of any judge of a court established by this constitution. But the constitution has not limited the power of the general assembly to abolish courts created by the legislature, nor its power to vacate the office of judges of such courts: State, ex rel., v. Wright, 7 O. S. 333.

1 Debates, 431; 2 Debates, 396, 400, 402, 484, 485, 684-686, 695, 698, 809, 837, 860, 870.

Art.IV, § 16. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Clerks of courts.

SECTION 16. There shall be elected in each county, by the electors thereof, one clerk of the court of common pleas, who shall hold his office for the term of three years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts of record held therein; but, the general assembly may provide, by law, for the election of a clerk, with a like term of office, for each or any other of the courts of record, and may authorize the judge of the probate court to perform the duties of clerk for his court, under such regulations as may be directed by law. Clerks of courts shall be removable for such cause and in such manner as shall be prescribed by law. (*See Const. 1802, Art. III, § 9.*)

See Const. 1802, Art. III, § 9.

As to the terms of the clerk of court, see Art. XVII, §§ 2, 3.

Cited: State, ex rel., v. McCracken, 51 O. S. 123; State, ex rel., v. Commissioners, 58 O. S. 384; State, ex rel., v. Thrall, 59 O. S. 368; Pearson v. Stephens, 13 O. C. C. 49, 7 O. C. D. 122 [reversed, Pearson v. Stephens, 56 O. S. 126]; State v. Hobson, 5 O. N. P. 321, 5 O. D. (N.P.) 442.

The period for the termination of the office of clerk of the court of common pleas, held by simple appointment to fill a vacancy, is not fixed by the constitution, but subject to legislative enactment (Art. II, § 20): State v. Neibling, 6 O. S. 40.

In case of a vacancy in the office of clerk of the common pleas, the successor, elected by the electors of the county, is elected for the full term of three years, which will commence from and after the day of his election: State v. Neibling, 6 O. S. 40.

The act of April 30, 1902 (95 O. L. 332), to amend § 2867 G. C., is unconstitutional and wholly void, because by it the general assembly has attempted (1) to exercise power not possessed by it to defer the commencement of the official terms of persons elected to the office of clerk of the court of common pleas to a date later than that fixed by the law in force when elected, and (2) to provide for vacancies in office which do not occur fortuitously: State, ex rel., v. Hall, 67 O. S. 303.

The legislature can not create a vacancy and fill the same by extending the period beyond that allowed by § 2, Art. X: State, ex rel., v. Harvey, 8 O. C. C. 599, 1 O. D. (N.P.) 124.

He was elected clerk of court, November, 1894, for a term of three years, beginning the first Monday of August, 1895. May, 1897, he resigned, and M was appointed clerk pro tem by the county commissioners. It was held that M holds the office for the remainder of the term, that at the election in November, 1897, no one could be elected for the unexpired term, and that the person elected as clerk at such election was elected for the full term of three years, beginning on the first Monday of August, 1898: Harte v. Bode, 4 O. N. P. 421, 7 O. D. (N.P.) 74.

The same result was reached by the supreme court in State, ex rel., v. Commissioners, 58 O. S. 384.

A clerk of the court of common pleas holds his office until his successor is elected and qualified, even if the time of his successor's qualifying and taking his office has been extended: State, ex rel., v. Killitz, 8 O. C. C. 30, 4 O. C. D. 509.

1 Debates, 431, 551; 2 Debates, 134-139, 364, 396, 397, 400, 402, 483-485, 685, 686, 695-698, 809, 810, 837, 860, 870.

Judges removable.

SECTION 17. Judges may be removed from office, by concurrent resolution of both houses of the general assembly, if two-thirds of the members, elected to each house, concur therein; but, no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor, until the party charged shall have had notice thereof, and an opportunity to be heard.

1 Debates, 431; 2 Debates, 397, 398, 400, 402, 483-485, 685, 686, 695-698, 810, 837, 860, 870.

Powers and jurisdiction.

SECTION 18. The several judges of the supreme court, of the common pleas, and of such other courts as may be cre-

ated, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

Cited: Atwood v. Whipple, 48 O. S. 308; Carey v. State, 70 O. S. 121.

The power to grant an injunction in a case pending in the court of common pleas, can not constitutionally be conferred on the supreme court: Kent v. Mahaffy, 2 O. S. 498.

Jurisdiction at chambers is incidental to, and grows out of the jurisdiction of the court itself. It is the power to hear and determine, out of court, such questions arising between the parties to a controversy, as might well be determined by the court itself, but which the legislature has seen fit to intrust to the judgment of a single judge, out of court, without requiring them to be brought before the court in actual session. It follows, that the jurisdiction of a judge at chambers can not go beyond the jurisdiction of the court to which he belongs, or extend to matters with which his court has nothing to do; and the constitution, in granting such jurisdiction at chambers to the judges of the several courts of the state as may be directed by law, is to be understood as limiting the jurisdiction of each to such subject-matters as are within the jurisdiction of his proper court, and to which it is *ex vi termini* limited: Railway v. Hurd, 17 O. S. 144.

Powers of judges in chambers must be expressly granted by statute: In re Jones Local Option Law, 8 O. C. C. (N.S.) 574, 19 O. C. D. 386.

1 Debates, 431; 2 Debates, 402, 484, 685, 686, 695-698, 810, 837, 860, 870.

SECTION 19. The general assembly may establish courts of conciliation, and prescribe their powers and duties; but such courts shall not render final judgment in any case, except upon submission, by the parties, of the matter in dispute, and their agreement to abide such judgment.

Courts of conciliation.

2 Debates, 390, 391, 402, 483-485, 685, 686, 695-698, 794, 805, 833, 837, 860, 870.

SECTION 20. The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the state of Ohio; and all indictments shall conclude, "against the peace and dignity of the state of Ohio." (*See Const. 1802, Art. III, § 12.*)

Style of process, prosecution, and indictment.

See Const. 1802, Art. III, § 12.

Cited: Beamer v. State, 21 O. C. C. 440, 12 O. C. D. 4; State v. Ward, 8 O. N. P. (N.S.) 561, 19 O. D. (N.P.) 744.

Where it appears from the caption of an indictment that the prosecution is carried on "in the name and by the authority of the state of Ohio," it need not be again averred in the successive counts of the indictment; and if the indictment contains more than one count, and a *nolle prosequi* is entered as to the first, the remaining counts of the indictment will not thereby be rendered defective for want of that averment, where it is contained in the caption: Davis v. State, 19 O. S. 270.

The act of April 20, 1874 (71 v. 146), giving a penalty of \$150, to be recovered by civil action, to the party aggrieved by a railroad corporation over-charging for the transportation of passengers or property, is not in contravention of this section of the constitution (see G. C. §§ 9002 and 9003): Railroad v. Cook, 37 O. S. 265.

Cases for the violation of village ordinances, sent to the court of common pleas in pursuance of G. C. § 4539, should be tried in that court upon the affidavit filed before the mayor. Indictment of the accused is neither necessary nor proper: Finnical v. Cadiz, 61 O. S. 494.

The constitution requires that all indictments shall conclude with the words "against the peace and dignity of the state of Ohio," but those words are not required to be at the conclusion of each count of an indictment: Olenforf v. State, 64 O. S. 118.

This section prescribing that indictments shall conclude with the phrase "against the peace and dignity of the state of Ohio," does not require that its insertion at the end of each count, nor provide that the phrase shall end the count or indictment at the place of insertion: State v. Mulford, 12 O. D. (N.P.) 655.

A second count in an indictment, concluding "against the peace and dignity of the state of Ohio, being a further description of the same

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transaction complained of in the first count of the indictment," is not rendered invalid by the use of the additional words following the constitutional phraseology, but they may be disregarded as mere surplusage: *State v. Stapely*, 19 O. D. (N.P.) 110.

Affidavits in minor criminal prosecutions need not conclude with the formal statements required in an indictment: *Fendrick v. State*, 9 O. C. C. (N.S.) 49, 18 O. C. D. 724.

The recovery of a penalty by civil instead of criminal proceedings is not a violation of this section providing for indictments in all prosecutions: *Guilbert v. Bank*, 5 O. N. P. (N.S.) 209, 18 O. D. (N.P.) 115.

A bastardy proceeding is not a criminal proceeding: *State v. Ward*, 8 O. N. P. (N.S.) 561, 19 O. D. (N.P.) 744.

2 Debates, 398, 402, 484, 485, 685, 686, 695-698, 810, 837, 960, 870.

Supreme court
commission.

SECTION 22 [21]. A commission, which shall consist of five members, shall be appointed by the governor, with the advice and consent of the senate, the members of which shall hold office for the term of three years from and after the first day of February, 1876, to dispose of such part of the business then on the dockets of the supreme court, as shall, by arrangement between said commission and said court, be transferred to such commission; and said commission shall have like jurisdiction and power in respect to such business as are or may be vested in said court; and the members of said commission shall receive a like compensation for the time being, with the judges of said court. A majority of the members of said commission shall be necessary to form a quorum or pronounce a decision, and its decision shall be certified, entered, and enforced as the judgments of the supreme court, and at the expiration of the term of said commission, all business undisposed of shall by it be certified to the supreme court and disposed of as if said commission had never existed. The clerk and reporter of said court shall be the clerk and reporter of said commission, and the commission shall have such other attendants not exceeding in number those provided by law for said court, which attendants said commission may appoint and remove at its pleasure. Any vacancy occurring in said commission, shall be filled by appointment of the governor, with the advice and consent of the senate, if the senate be in session, and if the senate be not in session, by the governor, but in such last case, such appointment shall expire at the end of the next session of the general assembly. The general assembly may, on application of the supreme court duly entered on the journal of the court and certified, provide by law, whenever two-thirds of such [each] house shall concur therein, from time to time, for the appointment, in like manner, of a like commission with like powers, jurisdiction and duties; provided, that the term of any such commission shall not exceed two years, nor shall it be created oftener than once in ten years.

The power of the supreme court to vacate or modify its judgment or orders, after the term, extends, since the expiration of the supreme court commission, to the judgments and orders of that body as fully as to judgments and orders of the court: *Murphy v. Swadner*, 34 O. S. 672.

The action of the commission in dismissing a proceeding in error, and overruling a motion to reinstate the same, is final; *Atcherly v. Dickinson*, 34 O. S. 537.

The supreme court has no power to rehear a cause decided by the late supreme court commission on the ground that the same was erroneously determined: *Maud v. Maud*, 34 O. S. 540.

In obedience to a joint resolution of the general assembly, March 30, 1875, the above section was submitted to the people on the twelfth day of October, 1875, and adopted. The following statement shows the

vote: Whole number of votes cast, 595,248; for the amendment, 339,076; against the amendment, 98,561.

ARTICLE V.

ELECTIVE FRANCHISE.

SECTION 1. Every white male citizen of the United States, Who may vote. of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections. (*See Const. 1802, Art. IV, §§ 1, 5.*)

See Const. 1802, Art. IV, §§ 1, 5.

I. Applied, cited, construed, referred to, etc.
II. Definition of term "white."

III. Qualifications of electors.
IV. Entitled to vote at all elections.

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

State, ex rel., v. Dudley, 1 O. S. 452, cited in dissenting opinion; State, ex rel., v. Ratterman, 58 O. S. 731; State, ex rel., v. Poston, 59 O. S. 122; State, ex rel., v. Board of Deputy State Supervisors of Elections, 80 O. S. 471; Ebbenpowell v. State, 14 O. C. C. 129, 7 O. C. D. 573; Otte v. State, 9 O. C. C. (N.S.) 293, 19 O. C. D. 203; State, ex rel., v. Kuhn, 8 O. N. P. 197, 11 O. D. (N.P.) 321; Jackson v. Washington, 3 O. N. P. (N.S.) 453 [affirmed, without report, Washington v. Jackson, 75 O. S. 573]; In re South Charleston Beal Law Election, 3 O. N. P. (N.S.) 373, 50 Bull. 173; Columbus v. Board of Elections, 13 O. D. (N.P.) 452; Thomas v. University, 195 U. S. 207, 14 O. F. D. 433; cited by mistake in Ammon v. Johnson, 3 O. C. C. 263, 2 O. C. D. 149.

II. DEFINITION OF TERM "WHITE."

For the technical legal meaning of "white," see Gray v. State, 4 O. 353; Jeffries v. Ankeny, 11 O. 372; Thacker v. Hawk, 11 O. 377; Lane v. Baker, 12 O. 237; Anderson v. Millikin, 9 O. S. 568; Monroe v. Collins, 17 O. S. 665; Williams v. School Directors, W. 578.

See note to Art. IV, § 1, of the constitution of 1802.

This restriction on the elective franchise is now abrogated by the fourteenth and fifteenth articles of amendments to the federal constitution. Article XIV, so far as it relates to this subject, is as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." Article XV provides that, "1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude. 2. The congress shall have power to enforce this article by appropriate legislation." Such legislation has been enacted by congress.

III. QUALIFICATIONS OF ELECTORS.

The act of April 13, 1863 (60 v. 80), "to enable qualified voters of this state, in the military service of this state or of the United States, to exercise the right of suffrage," was intended to enable qualified voters of the state, in the military service, to vote, in accordance with its provisions, as well without as within the territorial limits of this state. The act is not clearly in conflict with any constitutional provision, and is, therefore, to be regarded as a constitutional and valid enactment. It does not purport to have such extra territorial operation and effect as would place its enactments beyond the legitimate sphere of the legislative power of the state, and so render them invalid: Lehman v. McBride, 15 O. S. 573.

Persons residing in an asylum for disabled soldiers of the United States, at the time of an election, after the jurisdiction thereover had been restored to the state by the United States, and for the year next preceding the election, are to be regarded as residents of Ohio for the entire year, within the meaning of § 1, Art. V, of the state constitution, notwithstanding the fact that part of the year transpired while the jurisdiction was in the United States: Renner v. Bennett, 21 O. S. 431.

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An inmate of a county infirmary, who has adopted the township in which the infirmary is situated as his place of residence, having no family elsewhere, and who possesses the other qualifications required by law, is entitled to vote in the township in which said infirmary is situated: *Sturgeon v. Korte*, 34 O. S. 525.

A statute which authorizes a woman to act as notary public (act of April 26, 1898; 93 v. 405), was held to be unconstitutional since a notary public is an officer and must have the qualifications of an elector herein prescribed: *State, ex rel., v. Adams*, 58 O. S. 612.

The act of 86 v. 221, creating a board of workhouse directors, composed of females for the female department creates an office, and this can only be held by electors: *State, ex rel., v. Rust*, 4 O. C. C. 329, 2 O. C. D. 577.

The act of conferring school suffrage on women does not contravene this section: *State, ex rel., v. Columbus*, 9 O. C. C. 134, 6 O. C. D. 36 [affirmed, without report, *Mills v. Columbus*, 54 O. S. 631].

The village marshal and councilmen must be citizens of the United States: *State, ex rel., v. Collister*, 6 O. C. C. (N.S.) 33, 17 O. C. D. 529.

The legislature is not authorized to require another or different character of residence within the subdivisions than is required by the constitution within the state: *Wickham v. Coyner*, 12 O. C. C. (N.S.) 433, 20 O. C. D. 765.

When no record of naturalization can be produced, evidence that a person having the requisite qualifications to become a citizen did in fact and for a long time vote and hold office, and exercise rights belonging to citizens, is sufficient to warrant a jury in inferring that he has been duly naturalized as a citizen: *Boyd v. Thayer*, 143 U. S. 135.

This section does not render invalid a statute which provides for the election of judges on a non-partisan ballot (G. C. § 5054-1, et seq.): *State, ex rel., v. Miller*, 87 O. S. —.

IV. ENTITLED TO VOTE AT ALL ELECTIONS.

"The general principle which pervades the constitution on this subject, is, that no one shall be allowed to participate in the election of officers whose jurisdiction will not extend over him, or territorially include the place of his residence; but that the electors of each district or civil subdivision of the state, shall have the right to select their own official representatives, or public functionaries. And, keeping in view the limitations to which we have referred, there can be but little danger of misunderstanding what is meant by an elector's right 'to vote at all elections.' It is very clear that this phrase would not be correctly expounded, either by the words which counsel propose to add, or by any other words having reference solely to the place at which an election may be held. For, in the case of an election for officers in the militia, though it might be held at the residence of a person having the qualifications of a general elector of the state, yet, if by reason of age, disability or otherwise, such person is not 'subject to military duty,' he has no right to vote at such election. We think that, under a proper construction of the constitution, persons having the qualifications of an elector, may justly claim 'a right to vote at all elections' of officers of the state, and of such other civil officers as, by the provisions of the constitution and laws, are to be chosen by the electors of the county, township, ward or district in which such persons respectively reside. And whatever terms may be regarded as most opposite for the expression of this idea, we trust enough has been said to show that the place of holding an election is not the criterion, and furnishes no essential part of the test, which limits the elector's right to vote 'at all elections.' Besides, a right to vote at all elections, does not import, as counsel seem to suppose, a right to vote at all places of holding elections. The election of a governor of the state, for example, is a single election, although the law provides for its being held simultaneously at more than a thousand different places within the state. A right to vote at all elections does not, therefore, import a right to vote at more than one of the places prescribed by law for holding an election, any more than it imports a right to vote more than once at the same place; nor is it necessary to supply a supposed ellipsis in order to avoid such a construction. We find nothing, then, in this section which refers, in the slightest degree, even by implication, to the place of holding elections.

"Had it been the intention of the framers of our present constitution to fix or limit, by this section, the place at which the elective franchise should be exercised by the voters respectively, it is quite remarkable that no attempt should have been made to do so, in express terms; that such an important limitation of legislative power should have been left to be gathered from a supposed ellipsis—from something which is not said—or to be inferred from a declaration of the elector's 'right to vote at all elections.' And it is the more remarkable because, in the corresponding section of the constitution of 1802, which defines the qualifications of electors, there was a clause of express limitation, in the following terms: 'No person shall be entitled to vote, except in

the county or district in which he shall actually reside at the time of the election.' Now, the fact that this clause was wholly excluded from the present constitution, and no express limitation as to the place of voting was inserted in its stead, would seem to be quite significant. It is in this part of the constitution, which treats solely of the elective franchise, that we should naturally expect to find, if anywhere, a restriction limiting the place of its exercise. Here such restriction was placed, in express terms, by the constitution of 1802, and from this, its appropriate place, it was stricken out in the constitution of 1851, and inserted in no other place. On the contrary, the latter instrument declares, in the most general terms, that 'county officers shall be elected . . . in such manner . . . as may be provided by law.' And that officers, whose election is not provided for in the constitution, shall be elected 'in such manner as may be directed by law.' We think it may be very fairly inferred, that whilst the constitution defines the qualifications of electors, and prescribes by that portion of them all officers shall be chosen, it was intended to leave all further details, whether as to the place of holding elections, or the mode in which they should be conducted, to the wisdom of the legislature, to be provided for, and modified, from time to time, as the every-varying circumstances of the unknown future might seem to require. If prohibition was intended, why should the direct and express restriction of the former constitution have been rejected, and the matter left to vague conjecture and doubtful inference?": *Lehman v. McBride*, 15 O. S. 573.

The legislature has no right directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; and laws passed professedly to regulate its exercise or prevent its abuse must be reasonable, uniform and impartial: *Monroe v. Collins*, 17 O. S. 665.

When the constitutions of the state and of the United States are silent, the legislature may determine whether an office shall be filled by appointment or by election. If by the latter, each elector, under Art. V, has the right to vote for all candidates; and a statute providing for election of four police commissioners, and limiting the ballot to two, making the four persons receiving the highest number of votes the incumbents, is unconstitutional (*Okey, J.*, concurred, on the ground that the act was a special one, conferring corporate powers, being thereby in conflict with § 1, Art. XIII, of the constitution): *State v. Constantine*, 42 O. S. 437.

The general assembly, under the grant of legislative power secured to it by the constitution, has power to provide by statute for the registration of voters, and to enact that all electors must register before being permitted to vote; but such an act must be reasonable in its requirements: *Daggett v. Hudson*, 43 O. S. 548.

The requirement of § 6 (89 O. L. 434), G. C. § 4994, et seq., that certified nominations of candidates for public offices must be made by "convention, caucus, meeting of qualified electors, primary election held by such electors or central or executive committee, representing a political party, which at the next preceding election polled at least one per cent. of the entire vote cast in the state" is not repugnant to any provision of the constitution: *State, ex rel., v. Poston*, 58 O. S. 620.

A statute which provides that in cities of over three hundred thousand the polls shall open at five-thirty in the morning standard time, and shall close at four o'clock in the afternoon, standard time, does not violate this provision of the statutes: *Gentsch v. State*, 71 O. S. 151.

The statutes on the subject of primary elections (see G. C. § 4948, et seq., and § 13324, et seq.) are not rendered invalid by this section: *State, ex rel., v. Felton*, 77 O. S. 554.

The provision of the local option statute to the effect that only registered voters shall be entitled to vote does not render it invalid under this section, since under G. C. § 4941, a voter who has moved after regular registration days is entitled to a certificate of transfer: *Jeffrey v. State, ex rel.*, 4 O. C. C. (N.S.) 494, 16 O. C. D. 591 [affirmed, without report, *Jeffrey v. State, ex rel.*, 72 O. S. 647].

The right to vote has its source in the constitution of the state, and the statute requiring registration in no way qualifies that right. It follows therefore, that the phrase "qualified electors," as used in the statutes relating to local option elections, must be construed to mean an elector who is qualified to register within the proposed residence district, and not in the more restricted meaning of one who is not only qualified to register but actually has registered: *In re Jones Law Petition*, 11 O. N. P. (N.S.) 241.

A local option election is not invalid by reason of the insufficiency of the description of the "residence district" involved therein, where there is a map of the proposed district attached to the petition, and the description of the district by enumerating certain voting precincts presents no more difficulty with reference to venue than would be

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encountered in a prosecution for illegal voting: In re Jones Law Petition, 11 O. N. P. (N.S.) 241.

1 Debates, 693; 2 Debates, 8-10, 352, 550-555, 635-640, 811, 838, 860, 870.

By ballot.

SECTION 2. All elections shall be by ballot. (*See Const. 1802, Art. IV, § 2.*)

See Const. 1802, Art. IV, § 2.

This section does not render unconstitutional a statute which requires the election of judges by a non-partisan ballot (G. C. § 5054-1, et seq.): State, ex rel., v. Miller, 87 O. S. —.

The form of ballot, so long as it is a ballot, is left to the sound discretion of the general assembly: State, ex rel., v. Bode, 55 O. S. 224.

The requirements of § 6 (89 O. L. 434), G. C. § 4992, et seq., that certified nominations of candidates for public offices must be made by "convention, caucus, meeting of qualified electors, primary election held by such electors or central or executive committee, representing a political party, which at the next preceding election polled at least one per cent. of the entire vote cast in the state" is not repugnant to any provision of the constitution: State, ex rel., v. Poston, 58 O. S. 620.

The next contention is that G. C. § 13327, enacted April 20, 1904 (97 v. 107), which provides that "no person shall be allowed to vote at any primary election except he be an elector resident of the precinct ward or township in which he desires to vote and except he voted with the political party holding such primary election at the last general election, providing he voted at all at such election, unless he be a first voter; nor shall any person vote more than one time, or at any other than at the polling place in that precinct, ward or township wherein he resides," conflicts with § 1, Art. V. of the constitution, which prescribes that, "every male citizen of the United States, of the age of twenty-one years who shall have been a resident of the state one year next preceding the election, and of the county, township or ward in which he resides such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections," in this that it adds to the qualifications that entitle an elector to vote. If this contention is sound, then every elector has the constitutional right to vote at the primary election of every party. If the election is one at which merely the candidates of a party are to be selected, it can not be an objection that electors who do not belong to that party are not permitted to take part. That was one of the evils that the legislation was intended to prevent, and as to the test prescribed for determining an elector's partisanship it is impossible to conceive of a political party without the possession by its members of some qualifications, and the test prescribed by the statute is the usual one and is not unreasonable.

But a primary election held merely to name the candidates of a political party is not an election within the meaning of this section of the constitution. That section refers to an election of officers and not to the nomination of candidates: State, ex rel., v. Felton, 77 O. S. 554.

It is further contended that § 2, of Art. V. of the constitution, which provides that, "all elections shall be by ballot," is violated by the requirement that only known republican electors and those who will declare their belief in the principles of the republican party and their purpose to affiliate with it at the November election, shall be eligible to participate in said primary election, in that it will destroy the secrecy of the ballot. For present purposes it may be assumed that the word "ballot" as here used means a secret ballot, but there is no inhibition against the elector disclosing for whom he voted or intends to vote. Political parties have existed in this state for nearly a century. An elector can not belong to one without impliedly disclosing for whom he has voted or for whom he will vote, and in view of the party practice as it has so long prevailed of prescribing a requirement, like that in the statute, as a test of an elector's right to act with the party, it is not apprehended that it will be contended that the practice has been in violation of the constitution, and if not, then it does not become so merely because it is recognized by the statute. Affiliation with the party and participation in the primary still are voluntary. Moreover, compliance with the requirement will not disclose that the elector voted for any particular candidate: State, ex rel., v. Felton, 77 O. S. 554.

Article V, § 2, is taken literally from the former constitution of the state adopted in 1802. In a school for the study of English, it might be both interesting and useful to consider the meanings of the word "ballot" in primitive times, and the process by which its present meaning has been derived. But when the word was originally used as a part of the organic law of the state, the process of derivation had been completed and its meaning in the connection had become plain and well understood. It was not doubted then, nor has it ever been really doubted since, that it is a printed or written expression of the voter's choice

upon some material capable of receiving and reasonably retaining it, prepared or adopted by each individual voter and passing by the act of voting from his exclusive control into that of the election officers, to be by them accepted as the expression of his choice. When the phrase was readopted, in our present constitution, this meaning of the provision had been illustrated and made absolutely certain by repeated acts of legislation. It is conjectured that those who framed and adopted the constitution thought that a secret vote would contribute to the freedom with which the right of suffrage would be exercised, and the conjecture may be well founded. It is perhaps historically true that the two modes of voting in vogue at the time of the adoption of the constitution, were voting by ballot and voting viva voce, and that for many reasons the latter mode was rejected from the permanent policy of the state. But this does not aid the inquiry. The framers of the constitution did not place in the organic law the negative provision that the legislature shall not enact such law for the government of elections as would provide for voting viva voce, or communicate to the public a knowledge of the votes of the electors. What object they sought to accomplish by what they ordained may be the subject of divers conjectures, but respecting what they ordained, there is no room for conjecture or doubt. They ordained that all elections shall be by ballot.

It does appear from the statement of the case, that cardboards are attached to the machines bearing the names of candidates and the proposition and amendments, upon which the electors are to express a choice. These remain attached to the machine for the information of all voters. They do not pass into the control of any voter, nor by the act of voting into the control of the officers of the election. To speak of such a cardboard as the ballot of the constitution is obviously paying but mock deference to that instrument: *State, ex rel., v. Board of Deputy State Supervisors of Elections*, 80 O. S. 471.

The act of April 25, 1898 (93 O. L. 277), and the amendments thereto, being §§ 2966-54 to 2966-67, inclusive, Revised Statutes, to provide for the use of voting machines at elections, are void, because repugnant to § 2, Art. V, of the constitution, which ordains that "all elections" shall be by ballot: *State, ex rel., v. Board of Deputy State Supervisors of Elections*, 80 O. S. 471.

1 Debates, 693; 2 Debates, 10, 811, 838, 860, 870.

SECTION 3. Electors, during their attendance at elections, and in going to, and returning therefrom, shall be privileged from arrest, in all cases, except treason, felony, and breach of the peace. (*See Const. 1802, Art. IV, § 3.*)

Voters, when privileged from arrest.

See Const. 1802, Art. IV, § 3.

1 Debates, 693; 2 Debates, 10, 811, 838, 860, 870.

SECTION 4. The general assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime. (*See Const. 1802, Art. IV, § 4.*)

Forfeiture of elective franchise.

See Const. 1802, Art. IV, § 4.

Cited in dissenting opinion: *State, ex rel., v. Dudley*, 1 O. S. 452; *Sturgeon v. Korte*, 34 O. S. 525.

This section is not a grant of power, but a limitation upon power otherwise generally granted: *Mason v. State, ex rel.*, 58 O. S. 30.

General Code § 13314, providing for the exclusion from the right of suffrage of one who sells his vote is within the express authority conferred upon the general assembly by § 4, of Art. V, of the constitution, to exclude "any person convicted of bribery, perjury or other infamous crime": *Grooms v. State*, 83 O. S. 408.

1 Debates, 693; 2 Debates, 10, 352, 811, 838, 861, 870.

SECTION 5. No person in the military, naval, or marine service of the United States, shall, by being stationed in any garrison, or military, or naval station, within the state, be considered a resident of this state.

Persons not considered residents of the state.

Inmates of an asylum provided by the United States for disabled volunteer soldiers, resident within the territory so used, being within the exclusive jurisdiction of a government other than that of the state within whose boundaries such asylum or territory may be situate, are not residents of such state within the meaning of this section of the constitution; and where the constitution of such state confers the

elective franchise upon residents thereof alone, the inmates of such asylum, residents within such territory, are not entitled to vote at any election held within and under the laws of such state: *Sinks v. Reese*, 19 O. S. 306.

Persons residing in said asylum at the time of an election, after the jurisdiction thereover had been restored to the state, and for the year next preceding the election, are to be regarded as residents of the state, and for the entire year, notwithstanding the fact that part of the year transpired while the jurisdiction was in the United States: *Renner v. Bennett*, 21 O. S. 431.

1 Debates, 693; 2 Debates, 10, 811, 838, 861, 870.

Idiots or insane persons.

SECTION 6. No idiot, or insane person, shall be entitled to the privileges of an elector.

Cited: *Sturgeon v. Korte*, 34 O. S. 525; *Wickham v. Coyner*, 12 O. C. C. (N.S.) 433, 20 O. C. D. 765.

The vote of a man otherwise qualified, who is neither a lunatic nor an idiot, but whose faculties are simply greatly enfeebled by age, ought not to be rejected: *Sinks v. Reese*, 19 O. S. 306.

1 Debates, 693; 2 Debates, 10, 811, 838, 861, 870.

Primary elections

SECTION 7. All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator; but direct primaries shall not be held for the nomination of township officers or for the officers of municipalities of less than two thousand population, unless petitioned for by a majority of the electors of such township or municipality. All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority. (Adopted September 3, 1912.)

Vote: "Yes, 349,801; "No," 183,112.

ARTICLE VI.

EDUCATION.

Funds for educational and religious purposes.

SECTION 1. The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this state for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations.

Cited: *State, ex rel., v. Toledo*, 3 O. C. C. (N.S.) 468, 13 O. C. D. 327; *State, ex rel., v. Zeeb*, 9 O. C. C. 13, 6 O. C. D. 70; *Shryock v. Railroad*, 6 O. L. R. 19, 53 Bull. 86.

A law which authorizes the taxation of school lands immediately after sale thereof, as other lands in the state, does not contravene this section: *State, ex rel., v. Purcel*, 31 O. S. 352.

A special act requiring the board of education of a city to release the sureties of a county treasurer from liability for school funds of the board, which came to the hands of the treasurer for disbursement, does not contravene this section: *State, ex rel., v. Board of Education*, 38 O. S. 3.

Lands donated by congress to the general assembly for school purposes are exempt from local improvement assessment: *Pooch v. Ely*, 4 O. C. C. 41, 2 O. C. D. 408.

1 Debates, 693, 694; 2 Debates, 10, 11, 18, 698, 711, 821, 843; 861, 870.

SECTION 2. The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

School funds.

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| I. Cited. | III. System of common schools throughout the state. |
| II. General assembly to make provision for schools. | IV. Control by sect. |

I. CITED.

Finch v. Board of Education, 30 O. S. 37; Board v. Volk, 72 O. S. 469; State, ex rel., v. Board of Education, 76 O. S. 297; Quigley v. State, 5 O. C. C. 638, 3 O. C. D. 310 [affirmed, without report, Quigley v. State, 27 Bull. 332]; State v. Zeeb, 9 O. C. C. 13, 6 O. C. D. 70; Reid v. Board of Education, 6 O. N. P. (N.S.) 526, 16 O. D. (N.P.) 414; Board of Education v. Sawyer, 7 O. N. P. (N.S.) 401, 19 O. D. (N.P.) 1; Shryock v. Railroad, 6 O. L. R. 19, 53 Bull. 86.

II. GENERAL ASSEMBLY TO MAKE PROVISION FOR SCHOOLS.

Section 78 of the tax law of 1859, as amended April 8, 1865 (62 v. 105), which authorizes the taxation of school lands immediately after sale, as other lands in the state, is not in contravention of this section, where the payment of the purchase money, in whole or in part, is not defeated by such taxation: State v. Purcel, 31 O. S. 352.

Lands donated by congress to the state of Ohio, for school purposes, are exempt from assessment for the expense of local improvements: Poock v. Ely, 4 O. C. C. 41, 2 O. C. D. 408.

The law conferring the right upon women to vote and be voted for at school elections is valid: State, ex rel., v. Columbus, 9 O. C. C. 134, 6 O. C. D. 36 [affirmed, without report, Mills v. Board of Elections, 54 O. S. 631].

This section does not render invalid the statute which provides for free textbooks in city school districts (see G. C. § 7739): Mooney v. Bell, 8 O. N. P. 658, 11 O. D. (N.P.) 786.

The Boxwell law (G. C. § 7740, et seq.) does not contravene this section: State, ex rel., v. Board of Education, 8 O. N. P. 186, 11 O. D. (N.P.) 422 [affirmed, State, ex rel., v. Board of Education, 21 O. C. C. 383, 12 O. C. D. 337].

See Art. I, § 7 (constitution 1851), and Art. VIII, § 25 (constitution 1802).

III. SYSTEM OF COMMON SCHOOLS THROUGHOUT THE STATE.

See Art. I, § 19, and Art. II, § 26.

The statute of March 14, 1853, "to provide for the reorganization, supervision, and maintenance of common schools," is a law of classification, and not of exclusion, providing for the education of all youths within the prescribed ages; and the words "white" and "colored" as used in said act, are used in their popular and ordinary signification. Children of three-eighths African blood, generally treated and regarded as colored children by the community where they reside, are not, as of right, entitled to admission into the common schools set apart, under said act, for the instruction of white youths: Van Camp v. Board of Education, 9 O. S. 406; State, ex rel., v. McCann, 21 O. S. 198.

A special act requiring the board of education of a city to release the sureties of a county treasurer from liability for school funds of the board, which came to the hands of the treasurer for disbursement, does not contravene this section: State v. Board of Education, 38 O. S. 3.

The supreme court originally held that the statutes on the subject of school districts were of a general nature and must under Art. II, § 26, be of uniform operation throughout the state: State v. Powers, 38 O. S. 54.

This view was subsequently abandoned and it was held that statutes which created specific and special school districts were valid: State, ex rel., v. Shearer, 46 O. S. 275; see, to the same effect, State, ex rel., v. Board of Education, 7 O. C. C. 152, 3 O. C. D. 703.

Ultimately this view was in turn abandoned and it was held that such statutes were of a general nature; must be uniform in operation; and statutes which created specific school districts were held to be unconstitutional: State, ex rel., v. Spellmire, 67 O. S. 77.

A statute which attempted to make valid special school districts created under unconstitutional statutes, was itself held to be unconsti-

tutional in *Bartlett v. State*, 73 O. S. 54; *State v. Hickman*, 5 O. C. C. (N.S.) 175, 17 O. C. D. 216.

A statute providing for pension funds for teachers in city school districts of second grade, first class, was held to be unconstitutional by virtue of Art. II, § 26, as not having uniform operation throughout the state: *State, ex rel., v. Kurtz*, 21 O. C. C. 261, 11 O. C. D. 705.

IV. CONTROL BY SECT.

The constitution of the state does not enjoin or require religious instruction, or the reading of religious books, in the public schools of the state: *Board of Education v. Minor*, 23 O. S. 211.

The legislature having placed the management of the public schools under the exclusive control of directors, trustees and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given or what books shall be read therein: *Board of Education v. Minor*, 23 O. S. 211.

A regulation of the board of education requiring the reading of the Bible, as an opening exercise in schools, is not in violation of this section: *Nessle v. Hum*, 1 O. N. P. 140, 2 O. D. (N.P.) 60.

1 Debates, 693, 694; 2 Debates, 11-20, 698-700, 711, 821, 843, 861, 870

Public school
system; boards of
education.

SECTION 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts. (Adopted September 3, 1912.)

Vote: "Yes," 298,460; "No," 213,337.

Superintendent of
public instruction.

SECTION 4. A superintendent of public instruction to replace the state commissioner of common schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the state commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law.

SCHEDULE.

If the foregoing amendment be adopted by the electors it shall take effect and become a part of the constitution on the second Monday of July, 1913. (Adopted September 3, 1912.)

Vote: "Yes," 256,615; "No," 251,946.

ARTICLE VII.

PUBLIC INSTITUTIONS

Insane, blind,
and deaf and
dumb.

SECTION 1. Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the state; and be subject to such regulations as may be prescribed by the general assembly.

Cited: *Auditor v. State, ex rel.*, 75 O. S. 114; *State, ex rel., v. Kilgour*, 8 O. N. P. (N.S.) 617, 19 O. D. (N.P.) 670.

The place of medical superintendent of a hospital for the insane under the act of March 27, 1876, is an "office": *State, ex rel., v. Wilson*, 29 O. S. 347.

The appropriation of \$10,000 for Longview insane asylum (Hamilton county), contained in the act of April 15, 1880 (77 v. 249), is valid. The sole object was the making of a provision for the support of a public institution, which the constitution enjoins upon the general assembly: *State, ex rel., v. Oglevee*, 36 O. S. 211.

This provision of the statutes is not self-executed and the mode in which these statutes are to be fostered and supported is left to the discretion of the general assembly, which legislation is exercised by the passage of the statutes upon that subject (see G. C. § 1947, et seq.): *State v. Kiesewetter*, 37 O. S. 546.

This section does not empower the general assembly to pass a law providing for the payment of certain sums at specified times to worthy blind persons. 97 v. 392 violates this section: *Auditor v. State*, ex rel., 75 O. S. 114 [reversing *Davies v. State*, ex rel., 6 O. C. C. (N.S.) 417, 17 O. C. D. 593].

1 Debates, 365, 539, 542, 543; 2 Debates, 340, 349, 700, 821, 843, 861, 870.

SECTION 2. The directors of the penitentiary shall be appointed or elected in such manner as the general assembly may direct; and the trustees of the benevolent, and other state institutions, now elected by the general assembly, and of such other state institutions, as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the senate.

Directors of penitentiary, trustees of benevolent and other state institutions: how appointed.

Cited: *State*, ex rel., v. *Howe*, 25 O. S. 588; *State v. Wilson*, 29 O. S. 347; *State*, ex rel., v. *Kilgour*, 8 O. N. P. (N.S.) 617, 19 O. D. (N.P.) 670; *Thomas v. University Treasurer*, 195 U. S. 207, 14 O. F. D. 433.

"The first clause of this section is in no way inconsistent or in conflict with the provisions of § 27, Art. II, but is in entire harmony with it. It in no way qualifies or enlarges the exceptions to the general prohibition of any appointing power by the general assembly therein contained, but leaves that prohibition to operate with full force and effect. . . . The clause of § 2, Art. VII, that 'the directors of the penitentiary shall be appointed or elected in such manner as the general assembly may direct,' and that of § 27, Art. II, that 'the election and appointment of all officers, and the filling of all vacancies not otherwise provided for by the constitution, or the constitution of the United States, shall be made in such manner as may be directed by law,' are equivalent to each other. When the legislature 'directs,' it directs by law. Its appropriate voice is the voice of law. The prohibition attached by way of proviso, expressly to the one, applies equally to both, and is no more in conflict with the one than with the other": *State v. Kennon*, 7 O. S. 546.

Longview asylum, though a public, is not a state institution, within the meaning of § 2, Art. VII, of the constitution, which requires the trustees of such institutions to be appointed by the governor; and § 723, Revised Statutes, providing for the appointment of directors of the asylum, otherwise than by the governor, is not in conflict with the above provision of the constitution: *Chalfant v. State*, ex rel., 37 O. S. 60.

1 Debates, 365, 539-542, 549; 2 Debates, 340-343, 349, 700, 821, 843, 861, 870.

SECTION 3. The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the general assembly, and, until a successor to his appointee shall be confirmed and qualified.

Vacancies, how filled.

It is manifestly the design of the constitution to secure to such office an incumbent who possesses the confidence and approval, not only of the governor, but also of the senate of the state. The only exception provided for is one of necessity, to-wit: An appointee to fill a vacancy, when the advice and consent of the senate is not attainable: *State*, ex rel., v. *Howe*, 25 O. S. 588.

1 Debates, 549; 2 Debates, 241, 349, 700, 821, 843, 861, 870.

ARTICLE VIII.

PUBLIC DEBT AND PUBLIC WORKS.

SECTION 1. The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts,

Public debt.

direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

Cited: Cass v. Dillon, 2 O. S. 607; Trustees v. Dillon, 16 O. S. 38; Walker v. Cincinnati, 21 O. S. 14.

See, also, Art. VIII, §§ 2 and 3.

1 Debates, 292, 466 to 472; 2 Debates, 313, 314, 362, 363, 392, 424 to 426, 810, 837, 861, 870.

Additional, and for what purposes.

SECTION 2. In addition to the above limited power, the state may contract debts to repel invasion, suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state; but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the state, shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

Cited: Cass v. Dillon, 2 O. S. 607; Trustees v. Dillon, 16 O. S. 38; Walker v. Cincinnati, 21 O. S. 14.

See Art. II, § 28, and Art. VIII, §§ 1 and 3.

1 Debates, 292, 466, 472; 2 Debates, 312-314, 426, 810, 837, 861, 870.

The state to create no other debt.

SECTION 3. Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state.

The natural and obvious meaning of the first three sections of this article apply their limitations to the state alone, and not to her subdivisions: Cass v. Dillon, 2 O. S. 608; Walker v. Cincinnati, 21 O. S. 14.

The board of public works made contracts on behalf of the state, stipulating to pay yearly, for the period of five years, for materials and repairs of the canals of the state, an amount in the aggregate of \$1,375,000.00: Held, 1. That except in certain specified cases, no debt of any kind can be created on behalf of the state. 2. That no officers of the state can enter into any contract, except in cases specified in the constitution, whereby the general assembly will, two years after, be bound to make appropriations either for a particular object or a fixed amount; the power and the discretion, intact, to make appropriations, in general, devolving on each biennial general assembly, and for the period of two years. 3. The contracts of the board of public works creating a present obligation to pay for the period of five years a certain amount, do not come within said constitutional exceptions, and are in contravention of the provisions of § 3, Art. VIII, and § 2, Art. II: State v. Medberry, 7 O. S. 522.

1 Debates, 292, 466, 472; 2 Debates, 313, 314, 426, 810, 837, 861, 870.

Credit of state: the state shall not become joint owner or stockholder.

SECTION 4. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

It was competent for the legislature, under the constitution of 1802, to construct works of internal improvement, on behalf of the state, or to aid in their construction by subscribing to the capital stock of corporations created for that purpose, and to levy taxes to raise the means; and by an exercise of the same power, to authorize a county or township to subscribe to a work of that character, running through or into such county or township and to levy a tax to pay the

subscription: *Railway v. Commissioners*, 1 O. S. 77; *Railway v. Trustees*, 1 O. S. 105; *Loomis v. Spencer*, 1 O. S. 153; *Cass v. Dillon*, 2 O. S. 607; *Thompson v. Kelley*, 2 O. S. 647; *State, ex rel., v. Commissioners*, 6 O. S. 280; *State v. Van Horne*, 7 O. S. 327; *State, ex rel., v. Trustees*, 8 O. S. 394; *Trustees v. Cherry*, 8 O. S. 564; *State, ex rel., v. Commissioners*, 11 O. S. 183; *State, ex rel., v. Commissioners*, 12 O. S. 596; *Trustees v. Railway*, 12 O. S. 624; *Commissioners v. Nichols*, 14 O. S. 260; *State, ex rel., v. Perrysburg*, 14 O. S. 472; *State, ex rel., v. Trustees*, 14 O. S. 569; *Walker v. Cincinnati*, 21 O. S. 14.

This and the two following sections prevent the state, county, city, town or township from engaging in any private enterprises: *Raynolds v. Cleveland*, 13 O. D. (N.P.) 125.

County agricultural societies are of a public character, are not corporations for profit and may receive aid from the state: *Commissioners v. Brown*, 1 O. N. P. (N.S.) 357, 14 O. D. (N.P.) 241.

1 Debates, 292, 466, 472; 2 Debates, 313, 314, 426, 427, 810, 837, 861, 870.

SECTION 5. The state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.

No assumption of debts by the state.

This section is to be construed with the preceding section: *Raynolds v. Cleveland*, 13 O. D. (N.P.) 125.

"The clear implications of this section are, that counties, cities, towns, and townships, may create debts to repel invasion, suppress insurrection, or defend the state in war, which the state may assume; and may also create debts for other purposes, which the state is forbidden to assume": *Walker v. Cincinnati*, 21 O. S. 14.

1 Debates, 292, 467, 472, 538; 2 Debates, 295, 313, 314, 427, 810, 837, 861, 870.

SECTION 6. No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit. (As amended September 3, 1912.)

Counties, cities, towns, or townships, not authorized to become stockholders, etc. Insurance, etc.

Vote: "Yes," 321,388; "No," 196,628.

Original § 6 read as follows: "Sec. 6. [Counties, cities, towns, or townships, not authorized to become stockholders, etc.] The general assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association."

I. Cited.
II. Scope and effect.
III. Roads.

IV. Railroads.
V. Other improvements and public utilities.

I. CITED.

Commissioners v. Andrews, 18 O. S. 50; *Goblet Co. v. Findlay*, 5 O. C. C. 418, 3 O. C. D. 205; *Keehn v. Wooster*, 13 O. C. C. 270, 7 O. C. D. 456; *Raynolds v. Cleveland*, 13 O. D. (N.P.) 125; *Insurance Co. v. Trustees*, 53 Fed. 214, 7 O. F. D. 420; *Clapp v. Marice City*, 111 Fed. 103, 49 C. C. A. 251, 13 O. F. D. 704; *Defiance v. Schmidt*, 123 Fed. 1, 59 C. C. A. 159, 14 O. F. D. 408; *Trustees v. Savings Institution*, 128 U. S. 510.

II. SCOPE AND EFFECT.

This section plainly refers to future legislation alone, and the acts it prohibits are not subscriptions under laws existing at the time of the adoption of the new constitution, but the making of any more such laws: *Cass v. Dillon*, 2 O. S. 607; *State, ex rel., v. Trustees*, 8 O. S. 394; *Commissioners v. Nichols*, 14 O. S. 260; *State, ex rel., v. Perrysburg*, 14 O. S. 472; *Thompson v. Kelly*, 2 O. S. 647.

"The mischief which this section interdicts is a business partnership between a municipality or subdivision of the state, and individuals or private corporations or associations. It forbids the union of public and private capital or credit in any enterprise whatever. In no project originated by individuals, whether associated or otherwise, with a view to gain, are the municipal bodies named permitted to participate in such manner as to incur pecuniary expense or liability. They may neither become stockholders nor furnish money or credit for the benefit of the parties interested therein. Though joint stock companies, corporations, and associations only are named, we do not doubt that the reason of prohibition would render it applicable to the case of a single individual. The evil would be the same, whether the public suffered from the cupidity of a single person, or from that of several persons associated together. As this alliance between public and private interests is clearly prohibited in respect to all enterprises, of whatever kind, if we hold that these municipal bodies can not do on their own account what they are forbidden to do on the joint account of themselves and private partners, it follows that they are powerless to make any improvement, however necessary, with their own means, and on their own sole account. We may be very sure that a purpose so unreasonable was never entertained by the framers of the constitution": *Walker v. Cincinnati*, 21 O. S. 14.

Section 6, Art. VIII, of the constitution, declares that "the general assembly shall never authorize any county, city, town, or township, by vote of its citizens or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association." What the general assembly is thus prohibited from doing directly, it has no power to do indirectly. Taxation can only be authorized for public purposes. Where, therefore, a statute authorizes a county, township, or municipality, to levy taxes not above a given per cent. on the taxable property of the locality, for the purpose of building so much of a railroad as can be built for that amount, and the part of a railroad so to be built can be of no public utility, unless used to accomplish an unconstitutional purpose such tax is illegal and can not be imposed. Where public credit or money is furnished by any of the subdivisions of the state named, to be used in part construction of a work, which, under the statute authorizing its construction, must be completed, if completed at all, by other parties out of their own means, who are to own or have the beneficial control and management of the work when completed, the public money or credit thus used, can only be regarded as furnished for, or in aid of, such parties: *Taylor v. Commissioners*, 23 O. S. 22.

See Art. VIII, § 4.

III. ROADS.

The act 64 v. 80, "to authorize the county commissioners to construct roads on petition of a majority of resident landowners along and adjacent to the line of said road," etc., does not violate this section: *State v. Commissioners*, 17 O. S. 558.

An ordinance by a village council, authorizing the condemnation of land for the purpose of having the county commissioners build an avenue thereon, under a special law granting them authority to do so, is not in contravention of this section: *Purcell v. Riverside*, 1 O. C. C. 12, 1 O. C. D. 7.

General Code § 7405 authorizing county commissioners to purchase toll roads upon and along which suburban and interurban railroads are constructed and to maintain the same as free turnpikes, is not such part ownership as to conflict with this section: *Ferris v. Commissioners*, 9 O. C. C. (N.S.) 169, 19 O. C. D. 622.

IV. RAILROADS.

The act of May 4, 1869, "relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants" (66 v. 80), authorizing such cities to construct a railroad terminating in and essential to the interests of themselves, and to borrow, as a fund for that purpose, a sum of money not exceeding ten millions of dollars, violates neither the express nor implied prohibitions of this section: *Walker v. Cincinnati*, 21 O. S. 14 [affirming *Walker v. Cincinnati*, 1 C. S. C. R. 121].

A statute which authorizes certain counties, townships, and corporations therein named (69 v. 84), to raise money by taxation for the purpose of constructing part of a railroad to be used as a part of the entire system in connection with the road of the private corporation, is invalid by reason of this constitutional provision: *Taylor v. Commissioners*, 23 O. S. 22.

Section 6, Art. VIII, of the constitution, inhibits the combination, in any form, of the public funds or credit of any county, city, town, or township with the capital of any other person or persons, corporated or unincorporated, for the purpose of promoting any private enterprise whatever. Hence, the act of April 6, 1880 (77 v. 119), "to authorize certain townships to build railroads, and to lease or operate the same," is unconstitutional and void: *Wyscaver v. Atkinson*, 37 O. S. 80.

The act which provides for the sale of a railroad owned by a municipality is valid; a sale made in good faith and for a fair price can not properly be characterized as a loan of the credit of the municipality, and although a per centum of the gross receipts is to be paid as a part of the purchase price: *Cincinnati v. Dexter*, 55 O. S. 93.

If a municipal corporation owns a railway its lease of terminal facilities is not a violation of this section: *Cincinnati v. Ferguson*, 12 O. D. (N.P.) 439 [affirmed, without report, *Cincinnati v. Ferguson*, 66 O. S. 658].

The operation by a lessee company of a railroad owned by Cincinnati in connection with other lines, which such lessee company may own or control, is not a combination of city with another, as to violate this section: *Railway v. Railway*, 2 O. N. P. (N.S.) 110, 16 O. D. (N.P.) 777.

A statute which authorizes any township which has a certain population to build a railway, is invalid by violation of this section and bonds issued under such statute are void: *Trustees v. Insurance Co.*, 138 U. S. 67, 6 O. F. D. 686 [affirming *Insurance Co. v. Trustees*, 62 Fed. 718, 10 C. C. A. 611, 9 O. F. D. 218].

V. OTHER IMPROVEMENTS AND PUBLIC UTILITIES.

Section 8, of 92 v. 606, which provides for the construction of waterworks, if none be existing, or for the enlargement, improvement or addition to existing waterworks by the waterworks commissioners, and if they do not desire, they may contract with a company, etc., to do so, and provide for a lease back to the city and also for the purchase of the same, is invalid, because a city can not engage in an enterprise with an individual or corporation, which, as a completed whole, is to be owned and controlled in part by the city and in part by an individual or corporation: *Alter v. Cincinnati*, 56 O. S. 47 [modifying *Ampt v. Cincinnati*, 12 O. C. C. 119, 5 O. C. D. 356].

Under § 6, of Art. VIII, of the constitution, a city is prohibited from raising money for, or loaning its credit to, or in aid of, any company, corporation, or association; and thereby a city is prohibited from owning part of a property which is owned in part by another, so that the parts owned by both, when taken together, constitute but one property.

A city must be the sole proprietor of property in which it invests its public funds, and it can not unite its property with the property of individuals or corporations so that when united, both together form one property: *Alter v. Cincinnati*, 56 O. S. 47 [modifying *Ampt v. Cincinnati*, 12 O. C. C. 119, 5 O. C. D. 356].

A municipal corporation is without capacity to acquire land by purchase for the purpose of donating the same to a corporation or person as an inducement to build and operate manufacturing plants within its municipality: *Markley v. Mineral City*, 58 O. S. 430.

In *Zanesville v. Crossland*, 8 O. C. C. 652, 4 O. C. D. 363, it was held that G. C. § 4022 authorizes a municipal corporation to make an agreement with a corporation for hospital service, was not in violation of this section. This case, however, was reversed without report in *Crossland v. Zanesville*, 56 O. S. 735.

A statute which provided that the deposit of public funds in public depositories is not rendered invalid by this section: *State, ex rel., v. Bowers*, 4 O. C. C. (N.S.) 345, 16 O. C. D. 326 [affirmed, without report, *Bowers v. State, ex rel.*, 70 O. S. 423].

This section does not render invalid a contract whereby a private corporation agrees with a city to hire workhouse prisoners at a specified compensation: *Fitzpatrick v. Brush Co.*, 5 O. N. P. 165, 7 O. D. (N.P.) 216.

State or county aid may be given to a county agricultural society: *Commissioners v. Brown*, 1 O. N. P. (N.S.) 357, 14 O. D. (N.P.) 241.

Under this section a municipal corporation could not permit a street railway company to use the water pipes of a city for part of the return circuit of its electric current: *Dayton v. Railway*, 12 O. D. (N.P.) 258.

1 Debates, 292, 467, 472, 538; 2 Debates. 300-314, 427, 810, 837, 861, 870.

Art.VIII, § 7. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Sinking fund.

SECTION 7. The faith of the state being pledged for the payment of its public debt, in order to provide therefor, there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and, annually, to reduce the principal thereof, by a sum not less than one hundred thousand dollars, increased yearly, and each and every year, by compounding, at the rate of six per cent. per annum. The said sinking fund shall consist, of the net annual income of the public works and stocks owned by the state, of any other funds or resources that are, or may be, provided by law, and of such further sum, to be raised by taxation, as may be required for the purposes aforesaid.

A city is prohibited from owning part of a property which is owned by another, so that the parts owned by both when taken together form one property: *Ampt v. Cincinnati*, 12 O. C. C. 119, 5 O. C. D. 356, 37 Bull. 128.

1 Debates, 292, 467, 472-474, 476-492, 495-512, 514-524; 2 Debates, 295-299, 312-314, 427, 810, 837, 861, 870.

The commissioners of the sinking fund.

SECTION 8. The auditor of state, secretary of state, and attorney general, are hereby created a board of commissioners, to be styled, "The Commissioners of the Sinking Fund."

1 Debates, 292, 467, 524; 2 Debates, 313, 314, 427, 810, 837, 861, 870.

Their biennial report.

SECTION 9. The commissioners of the sinking fund shall, immediately preceding each regular session of the general assembly, make an estimate of the probable amount of the fund, provided for in the seventh section of this article, from all sources except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, to the governor, who shall transmit the same with his regular message, to the general assembly; and the general assembly shall make all necessary provision for raising and disbursing said sinking fund, in pursuance of the provisions of this article.

1 Debates, 292, 467, 524-537; 2 Debates, 299, 313, 314, 427, 810, 837, 861, 870.

Application of sinking fund.

SECTION 10. It shall be the duty of the said commissioners faithfully to apply said fund, together with all moneys that may be, by the general assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the state, excepting only, the school and trust funds held by the state.

Cited by mistake: *Kubach v. State*, 1 O. N. P. (N.S.) 405.

1 Debates, 292, 467, 537, 538; 2 Debates, 313, 314, 427, 810, 837, 861, 870.

Semi-annual report.

SECTION 11. The said commissioners shall, semi-annually, make a full and detailed report of their proceedings to the governor, who shall, immediately, cause the same to be published, and shall also communicate the same to the general assembly, forthwith, if it be in session, and if not, then at its first session after such report shall be made.

1 Debates, 292, 467, 537, 538; 2 Debates, 313, 314, 427, 810, 837, 838, 861, 870.

SECTION 12. So long as this state shall have public works which require superintendence, a superintendent of public works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the board of public works until otherwise provided by law, and with such other powers as may be provided by law. (As amended September 3, 1912.)

Superintendent of public works.

Vote: "Yes," 296,635; "No," 214,829.

Original § 12 read as follows: "Sec. 12. [Board of public works.] So long as this state shall have public works which require superintendence, there shall be a board of public works, to consist of three members, who shall be elected by the people, at the first general election after the adoption of this constitution, one for the term of one year, one for the term of two years, and one for the term of three years; and one member of said board shall be elected annually thereafter, who shall hold his office for three years."

Cited: State, ex rel., v. Railway, 37 O. S. 157; Commissioners v. Board of Public Works, 39 O. S. 628.

The board of public works is an agency of the state and can not be sued when the state is the real party in interest: Ley v. Kirtley, 5 O. N. P. (N.S.) 529, 18 O. D. (N.P.) 280.

1 Debates, 292, 467, 537, 538; 2 Debates, 300, 362, 427, 810, 838, 861, 870.

SECTION 13. [Repealed September 3, 1912.]

Vote: "Yes," 296,635; "No," 214,829.

Original § 13 read as follows: "Sec. 13. The powers and duties of said board of public works, and its several members, and their compensation, shall be such as now are, or may be, prescribed by law."

See Art. VIII, § 3.

No powers can be exercised by the board under laws existing when the constitution took effect, unless such laws are consistent with the provisions of the constitution. "The laws referred to are only such as are in harmony with the constitution": State v. Medberry, 7 O. S. 522.

The powers and duties of the board of public works are prescribed in great detail in the statutes relating to the public works of the state (see G. C. §§ 404 to 486): State, ex rel., v. Railway, 37 O. S. 157.

The board of public works possesses no powers except such as are expressly conferred by law, or as are necessarily implied: State, ex rel., v. Railway, 37 O. S. 174.

The board of public works is an agency of the state and can not be sued when the state is the real party in interest: Ley v. Kirtley, 5 O. N. P. (N.S.) 529, 18 O. D. (N.P.) 280.

1 Debates, 292, 467, 538; 2 Debates, 427, 810, 838, 861, 862, 870.

ARTICLE IX.

MILITIA.

SECTION 1. All white male citizens, residents of this state, being eighteen years of age, and under the age of forty-five years, shall be enrolled in the militia, and perform military duty, in such manner, not incompatible with the constitution and laws of the United States, as may be prescribed by law.

Who shall perform military duty.

For the meaning of the word "white," see Art. V, § 1, of this constitution, and Art. IV, § 1, of the constitution of 1802.

For commutation of military duty by money payments, see Art. XII, § 1, and note thereto.

Cited by mistake: Watterson v. Halliday, 2 O. N. P. (N.S.) 693, 15 O. D. (N.P.) 271.

By this section it is made the duty of all persons therein designated "to perform military duty" and a full discretion, limited only by the constitution and laws of the United States, is given to the general assembly to prescribe the manner in which that duty shall be performed and in the choice of means to enforce its performance: Houston v. Wright, 15 O. S. 318.

1 Debates, 191, 449-458, 461-464; 2 Debates, 220, 346-352, 651, 687, 688, 695, 821, 843, 862, 870.

Art. IX, § 2.

CONSTITUTION OF THE STATE OF OHIO OF 1851.

What officers to
be elected, and
by whom.

SECTION 2. Majors general, brigadiers general, colonels, lieutenant colonels, majors, captains, and subalterns, shall be elected by the persons subject to military duty, in their respective districts. (*See Const. 1802, Art. V.*)

See Const. 1802, Art. V.

1 Debates, 191, 464-466; 2 Debates, 220, 346, 350, 651, 688, 695, 821, 843, 862, 870.

Same subject.

SECTION 3. The governor shall appoint the adjutant general, quartermaster general, and such other staff officers, as may be provided for by law. Majors general, brigadiers general, colonels, or commandants of regiments, battalions, or squadrons, shall, severally, appoint their staff, and captains shall appoint their non-commissioned officers and musicians. (*See Const. 1802, Art. V.*)

See Const. 1802, Art. V.

A law authorizing county commissioners to provide a suitable place for an armory for the Ohio national guard and to pay the cost thereof is void: *Hubbard v. Fitzsimmons*, 57 O. S. 436; *State, ex rel., v. Brinkman*, 7 O. C. C. 165, 3 O. C. D. 710.

1 Debates, 191, 465, 466; 2 Debates, 220, 346, 348, 350, 651, 688, 695, 821, 843, 862, 870.

Governor to com-
mission officers,
and have power
to call forth the
militia.

SECTION 4. The governor shall commission all officers of the line and staff, ranking as such; and shall have power to call forth the militia, to execute the laws of the state, to suppress insurrection, and repel invasion. (*See Const. 1802, Art. V.*)

See Const. 1802, Art. V.

Cited by mistake: *Cable v. Alvord*, 27 O. S. 654; *Derby v. Heath*, 59 O. S. 54.

"The faithful execution of the laws when enacted, expounded and applied by the courts to cases, when necessary, is confined to the executive. The militia is an arm of the executive power. * * * Not a word is found in the constitution giving countenance to the opinion sometimes expressed, and more frequently felt, that the militia, or military force, instead of being a means to be employed by the executive department in executing the important duty of executing the laws, are a distinct department, equal to either of the others, and independent of their control": *State v. Coulter*, W. 421.

2 Debates, 350, 651, 688, 695, 821, 843, 862, 870.

Public arms.

SECTION 5. The general assembly shall provide, by law, for the protection and safe keeping of the public arms.

A law authorizing county commissioners to provide for a suitable place for an armory for the Ohio national guard and to pay the cost thereof is in violation of this section: *State, ex rel., v. Brinkman*, 7 O. C. C. 170, 3 O. C. D. 710; *State, ex rel., v. Kreighbaum*, 9 O. C. C. 619, 6 O. C. D. 654 [affirmed, without report, *State, ex rel., v. Commissioners*, 54 O. S. 615].

1 Debates, 191, 466; 2 Debates, 220, 346, 651, 688, 695, 821, 843, 862, 870.

ARTICLE X.

COUNTY AND TOWNSHIP ORGANIZATIONS.

County and
township officers.

SECTION 1. The general assembly shall provide, by law, for the election of such county and township officers as may be necessary. (*See Const. 1802, Art. VI, §§ 1, 3.*)

See Const. 1802, Art. VI, §§ 1, 3.

I. Cited.
II. Municipalities.

III. Officers must be elected.

I. CITED.

State v. Powers, 38 O. S. 54; State, ex rel., v. Smith, 44 O. S. 348; State, ex rel., v. Commissioners, 54 O. S. 333; Mason v. State, ex rel., 58 O. S. 30; State, ex rel., v. Brown, 60 O. S. 462; State v. Krause, 1 O. N. P. 91, 1 O. D. (N.P.) 122.

II. MUNICIPALITIES.

The constitution did not create the municipalities of the state, nor does it attempt to enumerate their powers. It recognizes them as things already in being, with powers that will continue to exist, so far as they are consistent with the organic law, until modified or repealed: Cass v. Dillon, 2 O. S. 607.

This section has no relation to city and village officers: State, ex rel., v. Covington, 29 O. S. 102.

III. OFFICERS MUST BE ELECTED.

Jury commissioners are not officers within the meaning of this or the following section; and, accordingly, they may be appointed: State v. Kendle, 52 O. S. 346.

The office of fish and game warden provided for by a former statute (R. S. § 409; 85 v. 171), was held to be an office within the meaning of this section; and such statute which provided for filling such office by appointment, was held to be unconstitutional: State, ex rel., v. Halliday, 61 O. S. 171; see, also, State, ex rel., v. Lewis, 5 O. N. P. 394, 5 O. D. (N.P.) 371; French v. Shirley, 7 O. N. P. 26, 9 O. D. (N.P.) 181.

A building committee appointed to supervise the construction of a courthouse are not county officers and must not be elected: Commissioners v. Pargillis, 10 O. C. C. 376, 6 O. C. D. 717, 3 O. D. (N.P.) 585 [affirmed, without report, Commissioners v. Pargellis, 53 O. S. 680].

The persons to be appointed in counties by the "Ohio humane society," as provided by G. C. § 10062, et seq., are not officers within the meaning of §§ 1 and 2 of this article: Beamer v. State, 21 O. C. C. 440, 12 O. C. D. 4.

The superintendent of a county children's home is not an officer within the meaning of this section: State, ex rel., v. McGonagle, 5 O. C. C. (N.S.) 292, 16 O. C. D. 685.

A tax collector is not an officer; and he may be appointed by the treasurer under statutory authority: State, ex rel., v. Gibson, 1 O. N. P. (N.S.) 565, 14 O. D. (N.P.) 513.

A tax inquisitor is not an officer and may be appointed: State, ex rel., v. Gilfillan, 3 O. N. P. (N.S.) 153, 15 O. D. (N.P.) 756.

An assistant prosecuting attorney is not an officer within the meaning of this section, and may be appointed by the prosecutor: State, ex rel., v. Taylor, 3 O. N. P. (N.S.) 505, 16 O. D. (N.P.) 66; see, also, State, ex rel., v. Hynicka, 17 O. D. (N.P.) 378 [affirmed, sub nomine, High v. State, ex rel., 10 O. C. C. (N.S.) 182].

Where it becomes necessary for a county officer, in the proper administration of the duties of his office, to procure assistance of counsel or attorney at law other than the prosecuting attorney, he may employ such counsel or attorney for any special occasion, provided the county commissioners assent to and order such employment and fix the compensation (see G. C. § 2412): State, ex rel., v. Cannon, 12 O. C. C. (N.S.) 162, affirmed by the supreme court, without report, Cannon v. State, ex rel., 80 O. S. 756, distinguished; State v. Struble, 9 O. N. P. (N.S.) 225.

The deputy state supervisors of elections are not officers within the meaning of this section, and may be appointed: State, ex rel., v. Craig, 8 O. N. P. 148, 10 O. D. (N.P.) 577.

On appeal it was held that injunction to restrain the payment of compensation to such officers was not the proper method of raising the question of the constitutionality of such statute: State, ex rel., v. Craig, 21 O. C. C. 175, 11 O. C. D. 553 [affirmed, without opinion, in State, ex rel., v. Craig, 64 O. S. 588].

The appointment of a stationary storekeeper by clerk of court of common pleas is void, as it contravenes this section: State, ex rel., v. Brennan, 49 O. S. 33.

2 Debates, 565, 640-642, 644, 654, 810, 838, 862, 870.

SECTION 2. County officers shall be elected on the first Tuesday after the first Monday in November, by the electors of each county in such manner, and for such term, not exceeding three years, as may be provided by law. (*As amended October 13, 1885; 82 v. 446.*)

County officers,
when elected.

Amended October 13, 1885; 82 v. 446.

As to time of holding elections, term of office, etc., see Art. XVII, §§ 1, 2, 3.

Original § 2 read as follows: "Sec. 2. [County officers; when elected.] County officers shall be elected on the second Tuesday of October, until otherwise directed by law, by the qualified electors of each county, in such manner, and for such term, not exceeding three years, as may be provided by law." (See Const. 1802, Art. VI, § 1.)

Cited: State, ex rel., v. Killitts, 8 O. C. C. 30, 4 O. C. D. 509; State, ex rel., v. Thompson, 9 O. C. C. 161, 6 O. C. D. 106.

The period for the expiration of the term of office of a county treasurer, held by appointment to fill a vacancy, is subject to legislative control: State, ex rel., v. Commissioners, 7 O. S. 126.

The power to fix the times of holding elections for county officers is vested by the constitution in the legislature, and when a time has been so fixed by that body, any election for such officers held at a different time is unauthorized and void: State, ex rel., v. Dombaugh, 20 O. S. 167.

Where the term of an office is fixed and limited by the constitution, there is no power in the general assembly to extend the term or tenure of such office beyond the time so limited: State, ex rel., v. Brewster, 44 O. S. 589.

By virtue of Art. IV, § 16, the office of clerk of court is exempt from this section: State, ex rel., v. McCracken, 51 O. S. 123.

The provisions of Art. X, of the constitution, requiring the general assembly to provide by law for the election of county officers, and that such officers shall be elected on the first Tuesday after the first Monday in November, disable the general assembly to provide by law for an interval between the official terms of a sheriff and one elected to succeed him: State, ex rel., v. Heffner, 59 O. S. 368.

That the office of fish and game warden provided for by a former statute (R. S. § 409; 85 v. 171) was an office within the meaning of this section and that the legislature could not provide for filling the same by appointment, see State, ex rel., v. Halliday, 61 O. S. 171; see, also, State, ex rel., v. Lewis, 5 O. N. P. 394, 5 O. D. (N.P.) 371; French v. Shirley, 7 O. N. P. 26, 9 O. D. (N.P.) 181.

Where a county auditor has served three years, his term of office expires and a vacancy has "happened in his office," notwithstanding the fact that his successor does not take his seat until several months after the expiration of the former officer's term: Robbins v. Commissioners, 2 O. C. C. 23, 1 O. C. D. 340.

A statute making the term of the members of the board of control five years is void: State, ex rel., v. Alter, 5 O. C. C. 253, 3 O. C. D. 127.

The legislature can not create a vacancy and fill same by extending period beyond that allowed by § 2, Art. X: State, ex rel., v. Harvey, 8 O. C. C. 599, 4 O. C. D. 227.

In so far as G. C. § 2408 (as amended to conform to this ruling) attempted to authorize the appointment of legal counsel by county commissioners, it contravened the provision that all county officers shall be elected: State, ex rel., v. Cannon, 12 O. C. C. (N.S.) 103, 21 O. C. D. 236.

An assistant prosecuting attorney is not an officer of government within the meaning of this section; so that, in special counties having no solicitor, said assistant may be detailed to aid the county commissioners: State, ex rel., v. Taylor, 3 O. N. P. (N.S.) 505, 16 O. D. (N.P.) 66.

2 Debates, 565, 640-644, 654, 810, 838, 862, 870.

Eligibility of
sheriff and
treasurer.

SECTION 3. No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years. (*See Const. 1802, Art. VI, § 1.*)

See Const. 1802, Art. VI, § 1.

The power to take from the office of sheriff a material part of long-recognized and accustomed duties, create a new office, and confer such duties on its incumbent, so that the latter will have complete power with respect to such duties, to the exclusion of the sheriff, may well be doubted: Hulse v. State, 35 O. S. 421.

That the practice existing at the time of the adoption of the constitution may be changed, and the powers and duties of the sheriff, in some respects, increased or diminished, can not be doubted: Hulse v. State, 35 O. S. 421.

The provisions of Art. X, of the constitution, requiring the general assembly to provide by law for the election of county officers, and that such officers shall be elected on the first Tuesday after the first Monday in November, disable the general assembly to provide by law for an

interval between the official terms of a sheriff and one elected to succeed him: State, ex rel., v. Heffner, 59 O. S. 368.

The general provisions of the constitution do not limit conflicting provisions of an amendment to the constitution that are specific and temporary. Section 3, Art. X, of the constitution, that "No person shall be eligible to the office of sheriff, or county treasurer, for more than four years in any period of six years," is not applicable to the act entitled, "An act to conform the terms of office of various state and county officers to the constitutional provisions of (relating to) biennial elections," 98 v. 271: State, ex rel., v. Harris, 77 O. S. 481.

The object of the constitutional amendment, Art. XVII, and of the act of April 16, 1906 (98 v. 271), passed pursuant thereto, was the continuance in office of the incumbents during the interregnum occasioned thereby, and a sheriff whose term of office was extended under the act, is not ineligible, under § 3, of Art. X, of the constitution, to succeed himself for another term: State, ex rel., v. Pontius, 78 O. S. 353.

2 Debates, 565, 643, 644, 654, 810, 838, 862, 870.

SECTION 4. Township officers shall be elected by the electors of each township, at such time, in such manner, and for such term, not exceeding three years, as may be provided by law; but shall hold their offices until their successors are elected and qualified. (*As amended October 13, 1885: 82 v. 449.*)

Township officers,
when elected.

As amended October 13, 1885; 82 v. 449.

Original § 4 read as follows: "Sec. 4. [Township officers; when elected.] Township officers shall be elected on the first Monday of April annually, by the qualified electors of their respective townships, and shall hold their offices for one year, from the Monday next succeeding their election, and until their successors are qualified."

For time of holding elections, terms of office, etc., under constitutional amendment, see Art. XVII, §§ 1, 2, 3.

Cited: State, ex rel., v. Howe, 25 O. S. 588; State v. Barbee, 45 O. S. 347; State v. McCracken, 51 O. S. 123.

A building committee appointed to supervise the construction of a courthouse are not county officers, and must not be elected: Commissioners v. Pargillis, 10 O. C. C. 376, 6 O. C. D. 717.

Decennial district assessors are not township officers within the meaning of this section: Hirsch v. Commissioners, 12 O. D. (N.P.) 679.

2 Debates, 565, 644, 654, 810, 825, 838, 862, 870.

SECTION 5. No money shall be drawn from any county or township treasury, except by authority of law.

County and town-
ship treasuries.

Cited: Commissioners v. Andrews, 18 O. S. 49; State, ex rel., v. Yates, 66 O. S. 546 [reversing State, ex rel., v. Yates, 21 O. C. C. 686, 12 O. C. D. 298]; Jones v. Commissioners, 2 O. C. C. (N.S.) 14, 15 O. C. D. 510; State, ex rel., v. Commissioners, 13 O. D. (N.P.) 97.

The board of county commissioners has no power, under the constitution and laws of Ohio, to employ an attorney to prosecute criminal complaints before the examining magistrates of the county, except in cases in which the county, in its quasi corporate capacity, has a direct interest. Nor can the board of commissioners be compelled, by mandamus, to pay for such services out of the county treasury: State, ex rel., v. Commissioners, 21 O. S. 648.

Neither fees nor compensation for county officials can be paid out of the treasury unless there is constitutional authority therefor: Richardson v. State, ex rel., 66 O. S. 108 [affirming Richardson v. State, ex rel., 19 O. C. C. 191, 10 O. C. D. 458].

The board of county commissioners may pass upon and adjudicate legal claims against the county for services, but they can not allow invalid claims, and an attempt by the board to allow a claim of such character will not bind the county. Such payment may be recovered: Printing Co. v. State, 68 O. S. 362.

One who has furnished material or labor for the county under contract, which is invalid by reason of failure to advertise properly for bids (Bridge Co. v. Campbell, 60 O. S. 406); or by reason of failure to file service showing there is money in the treasury (State v. Fronizer, 2 O. N. P. (N.S.) 373, 15 O. D. (N.P.) 1), can not be recovered upon such contract nor can he recover reasonable compensation therefor. If, however, compensation for such material and work has been paid to the contractor, such payment can not be recovered from him on the ground that no service was filed showing that there was money in the treasury or process of collection: State, ex rel., v. Fronizer, 77 O. S. 7 [affirming State, ex rel., v. Fronizer, 8 O. C. C. (N.S.) 216, 18 O. C. D. 709, which affirmed State, ex rel., v. Fronizer, 3 O. N. P. (N.S.) 303, 15 O. D. (N.P.) 613].

The unconstitutionality of a method provided by law for making special assessments to pay bonds issued by a county to pay for road improvements, if conceded, does not affect the validity of the bonds as obligations of the county, nor the right of the holder to recover judgment thereon: *Commissioners v. Savings Institution*, 119 Fed. 36, 55 C. C. A. 614, 15 O. F. D. 33.

2 Debates, 565, 644, 654, 810, 825, 838, 862, 870.

What officers may
be removed.

SECTION 6. Justices of the peace, and county and township officers, may be removed, in such manner and for such cause, as shall be prescribed by law.

Cited: *State, ex rel., v. McLain*, 58 O. S. 313.

There is no requirement that the power of removal, that may be prescribed by law, shall be conferred on the courts, for the legislature is to provide the manner, as well as the cause, of removal: *State, ex rel., v. Hawkins*, 44 O. S. 98.

This section applies only to county and township officers, and not to officers of municipal corporations: *Dorgan v. Columbus*, 12 O. D. (N.P.) 121.

1 Debates, 298; 2 Debates, 151, 318, 566, 633, 664, 810, 838, 862, 870.

Local taxation.

SECTION 7. The commissioners of counties, the trustees of townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law.

Cited: *Trustees v. Dillon*, 16 O. S. 38; *State, ex rel., v. Commissioners*, 17 O. S. 558; *Rees v. Olmstead*, 135 Fed. 296, 68 C. C. A. 50, 14 O. F. D. 737.

If a county or township can incur debts, it can levy taxes to pay them, notwithstanding such tax is not for police purposes: *Cass v. Dillon*, 2 O. S. 607.

The construction of drains by townships, in cases where the public health, convenience, or welfare demands it, is within the meaning of "police purposes": *Sessions v. Crunkilton*, 20 O. S. 349 [followed in *Taylor v. Crawford*, 72 O. S. 560].

Manifestly, this is no limitation on the power of the general assembly; and an act requiring county commissioners to cause a designated road to be improved, and to levy a tax to defray the expense thereof, where the road is open to the public, is not invalid for want of power in the general assembly to pass it: *State, ex rel., v. Commissioners*, 35 O. S. 458.

This section does not prevent the general assembly from authorizing the state board of health to compel municipal corporations to install sewage purification works: *Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113].

The act, entitled "An act to authorize the commissioners of the counties of Putnam, Wood, and Henry to levy a tax to pay for certain fees therein named," and being the fees of a surveyor for work done in the construction of a joint ditch by said counties, is not in conflict with this section: *State, ex rel., v. Commissioners*, 41 O. S. 423.

An act which attempts to authorize any county to raise money to secure the location therein of the Ohio agricultural experiment station, by a tax upon all taxable property within such county, contravenes Art. XII, § 2, and can not be sustained under this section: *Wasson v. Commissioners*, 49 O. S. 622.

The recovery and tax levy authorized by the act for the suppression of mob violence (92 v. 136; see G. C. § 6285) are within the general powers of the legislature and provision of this section: *Commissioners v. Church*, 62 O. S. 318 [affirming *Mitchell v. Commissioners*, 10 O. C. D. 801, which reversed *Mitchell v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262, and reversing *Caldwell v. Commissioners*, 15 O. C. C. 167, 8 O. C. D. 56, which affirmed *Caldwell v. Commissioners*, 4 O. N. P. 249, 6 O. D. (N.P.) 367].

A law authorizing county commissioners to provide a suitable place for an armory for the Ohio national guard and pay the cost thereof, is void: *State, ex rel., v. Brinkman*, 7 O. C. C. 165, 3 O. C. D. 710; *State, ex rel., v. Commissioners*, 9 O. C. C. 619, 6 O. C. D. 654 [affirmed, without report, *State, ex rel., v. Commissioners*, 54 O. S. 615].

Gas wells, pipe lines, pumping stations and machinery owned by a municipal corporation and used by it for the conveyance of gas to be consumed by it and by its citizens generally, are used exclusively for a public purpose and are exempt from taxation: *Toledo v. Hosler*, 54 O. S. 418 [reversing *Toledo v. Hosler*, 10 O. C. C. 257, 6 O. C. D. 590].

This section is not a limitation on the power of the general assembly: *Loeb v. Trustees*, 91 Fed. 37, 12 O. F. D. 349 [reversed on other ground, *Loeb v. Trustees*, 179 U. S. 472].

Whether under this section a township can incur any debts or levy any taxes except for police purposes, was discussed in *Bank v. Trustees*, 98 Fed. 524, 13 O. F. D. 318, but not there decided.

2 Debates, 565, 644, 747, 748, 775, 794, 805, 833, 838, 862, 870.

ARTICLE XI.

APPORTIONMENT.

SECTION 1. The apportionment of this state for members of the general assembly shall be made every ten years, after the year one thousand eight hundred and fifty-one, in the following manner: The whole population of the state, as ascertained by the federal census, or in such other mode as the general assembly may direct, shall be divided by the number "one hundred," and the quotient shall be the ratio of representation in the house of representatives, for ten years next succeeding such apportionment.

Apportionment for members of the general assembly; ratio of representation in house.

Cited: *State, ex rel., v. Campbell*, 48 O. S. 435.

"The apportionment of the state must be regarded as made by the convention, and none the less so because the approval of the people was made necessary to its ultimate effect. They but ratified and approved an act already done by their representatives in convention, and were not, in any correct sense, the authors of the act itself": *State, ex rel., v. Dudley*, 1 O. S. 437.

"The constitution apportions political power among the inhabitants of the state, as nearly equally as possible in proportion to numbers, without any regard whatever to property, or, indeed, to any other circumstance. Inhabitants alone are represented; a given number in one place exercise the same political power, as a like number in any other locality. Some departure from the absolute equality of numbers is allowed in favor of the inhabitants of small counties, in the constitution of the house of representatives; but this in no wise changes the basis of representation from population to territory or property": *State, ex rel., v. Dudley*, 1 O. S. 437.

1 Debates, 460; 2 Debates, 5, 6, 708, 748, 767, 781, 811-813, 845, 846, 862, 870.

SECTION 2. Every county having a population equal to one-half of said ratio, shall be entitled to one representative; every county, containing said ratio, and three-fourths over, shall be entitled to two representatives; every county containing three times said ratio, shall be entitled to three representatives; and so on, requiring after the first two, an entire ratio for each additional representative. Provided, however, that each county shall have one representative. [As amended November 3, 1902: 95 v. 967.]

Same subject.

As amended November 3, 1902; 95 v. 967.

The vote adopting this amendment was "Yes," 757,505; "No," 26,497.

Original § 2 reads as follows: "Sec. 2. [Same subject.] Every county having a population equal to one-half of said ratio, shall be entitled to one representative; every county, containing said ratio, and three-fourths over, shall be entitled to two representatives; every county, containing three times said ratio, shall be entitled to three representatives; and so on, requiring after the first two, an entire ratio for each additional representative."

1 Debates, 460; 2 Debates, 6, 708, 748-751, 782, 846, 862, 870.

SECTION 3. When any county shall have a fraction above the ratio, so large, that being multiplied by five, the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratios, among the several sessions of the decennial period, in the following manner: If there be only

Same subject.

one ratio, a representative shall be allotted to the fifth session of the decennial period; if there are two ratios, a representative shall be allotted to the fourth and third sessions, respectively; if three, to the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

Cited: State, ex rel., v. Campbell, 48 O. S. 435.

1 Debates, 460; 2 Debates, 6, 708, 751-753, 756-766, 781, 782, 820, 846, 862, 870.

Same subject.

SECTION 4. Any county, forming with another county or counties, a representative district, during one decennial period, if it have acquired sufficient population at the next decennial period, shall be entitled to a separate representation, if there shall be left, in the district from which it shall have been separated, a population sufficient for a representative; but no such change shall be made, except at the regular decennial period for the apportionment of representatives.

Cited: State, ex rel., v. Campbell, 48 O. S. 435.

1 Debates, 460; 2 Debates, 6, 708, 765, 766, 782, 846, 862, 870.

Same subject.

SECTION 5. If, in fixing any subsequent ratio, a county, previously entitled to a separate representation, shall have less than the number required by the new ratio for a representative, such county shall be attached to the county adjoining it, having the least number of inhabitants; and the representation of the district, so formed, shall be determined as herein provided.

Cited: State, ex rel., v. Campbell, 48 O. S. 435.

1 Debates, 460; 2 Debates, 6, 708, 766, 767, 782, 846, 862, 870.

Ratio for a senator.

SECTION 6. The ratio for a senator shall forever, hereafter, be ascertained by dividing the whole population of the state by the number thirty-five.

Cited: State, ex rel., v. Campbell, 48 O. S. 435.

1 Debates, 460; 2 Debates, 7, 708, 766, 782, 846, 862, 870.

Senatorial districts.

SECTION 7. The state is hereby divided into thirty-three senatorial districts, as follows: The county of Hamilton shall constitute the first senatorial district; the counties of Butler and Warren, the second; Montgomery and Preble, the third; Clermont and Brown, the fourth; Greene, Clinton, and Fayette, the fifth; Ross and Highland, the sixth; Adams, Pike, Scioto, and Jackson, the seventh; Lawrence, Gallia, Meigs, and Vinton, the eighth; Athens, Hocking, and Fairfield, the ninth; Franklin and Pickaway, the tenth; Clark, Champaign, and Madison, the eleventh; Miami, Darke, and Shelby, the twelfth; Logan, Union, Marion and Hardin, the thirteenth; Washington and Morgan, the fourteenth; Muskingum and Perry, the fifteenth; Delaware and Licking, the sixteenth; Knox and Morrow, the seventeenth; Coshocton and Tuscarawas, the eighteenth; Guernsey and Monroe, the nineteenth; Belmont and Harrison, the twentieth; Carroll and Stark, the twenty-first; Jefferson and Columbiana, the twenty-second; Trumbull and Mahoning, the twenty-third; Ashtabula, Lake, and Geauga, the twenty-fourth; Cuyahoga, the twenty-fifth; Portage and Summit, the twenty-sixth; Medina and Lorain, the twenty-seventh; Wayne and Holmes, the twenty-eighth; Ashland and Richland, the twenty-ninth; Huron, Erie

Sandusky and Ottawa, the thirtieth; Seneca, Crawford, and Wyandot, the thirty-first; Mercer, Auglaize, Allen, Van Wert, Paulding, Defiance, and Williams, the thirty-second; and Hancock, Wood, Lucas, Fulton, Henry and Putnam, the thirty-third: For the first decennial period, after the adoption of this constitution, each of said districts shall be entitled to one senator, except the first district, which shall be entitled to three senators.

Cited: State, ex rel., v. Campbell, 48 O. S. 435.

"The whole state is divided into districts, and the limits of each clearly and definitely fixed. These limits were, in every instance, described by the county lines, as they existed when the constitution was adopted by the convention—the boundaries of counties being referred to and adopted, from convenience and propriety, as the boundaries of districts; and thus making the limits of each district as certain as though it had been marked out by natural or artificial objects. While the counties remained, as they then were, of course, no one of them could be divided, so as to fall into different districts. But while the boundaries of counties, to a certain extent, and districts, were fixed upon the same lines, they were yet independent of each other; so that whatever changes might be made in county limits, the lines of the districts remained as before, subject only to such changes as are provided for in the constitution itself": State, ex rel., v. Dudley, 1 O. S. 437.

1 Debates, 460, 461; 2 Debates, 7, 709, 710, 783-787, 822, 823, 846, 862, 870.

SECTION 8. The same rules shall be applied, in apportioning the fractions of senatorial districts, and in annexing districts, which may hereafter have less than three-fourths of a senatorial ratio, as are applied to representative districts.

Same subject.

Cited: State, ex rel., v. Dudley, 1 O. S. 437; State, ex rel., v. Campbell, 48 O. S. 435.

1 Debates, 460; 2 Debates, 7, 708, 766-771, 781, 782, 846, 862, 870.

SECTION 9. Any county forming part of a senatorial district, having acquired a population equal to a full senatorial ratio, shall be made a separate senatorial district, at any regular decennial apportionment, if a full senatorial ratio shall be left in the district from which it shall be taken.

Same subject.

Cited: State, ex rel., v. Dudley, 1 O. S. 437; State, ex rel., v. Campbell, 48 O. S. 435.

2 Debates, 708, 767, 782, 846, 863, 870.

SECTION 10. For the first ten years, after the year one thousand eight hundred and fifty-one, the apportionment of representatives shall be as provided in the schedule, and no change shall ever be made in the principles of representation, as herein established, or, in the senatorial districts, except as above provided. All territory, belonging to a county at the time of any apportionment, shall, as to the right of representation and suffrage, remain an integral part thereof, during the decennial period.

Apportionment of representatives for ten years.

Cited: State, ex rel., v. Dudley, 1 O. S. 437; State, ex rel., v. Campbell, 48 O. S. 435.

"The exception contained in this section refers to the eighth and ninth sections. * * * The provisions of this section irrevocably fix the districts, and apportion the representation for ten years. At the expiration of that period, other sections of the eleventh article direct specifically in what manner the executive officers, charged with the duty, shall ascertain and fix it, for another period of ten years. It is manifest that no change, alteration, or modification of the representative districts, is allowed between the periods of decennial apportionment; unlike the senate districts, they are not forever to remain unchange^d. On the contrary, they must, of necessity at the expiration

of each ten years, so change as to conform to the boundaries of counties, as they are then found to exist; and the limits of districts, at those periods, become again identical with those of counties": State, ex rel., v. Dudley, 1 O. S. 437.

1 Debates, 460; 2 Debates, 7, 708, 767, 771, 782, 846, 863, 870.

When the governor, auditor, and secretary of state to determine ratio of representation.

SECTION 11. The governor, auditor, and secretary of state, or any two of them, shall, at least six months prior to the October election, in the year one thousand eight hundred and sixty-one, and, at each decennial period thereafter, ascertain and determine the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years within the next ensuing ten years, and the governor shall cause the same to be published, in such manner as shall be directed by law.

Cited: State, ex rel., v. Maxfield, 9 O. C. C. 26, 6 O. C. D. 11.

Where the governor, auditor and secretary of state, or a majority of them, as the board created by § 11, of Art. XI, of the constitution, for the decennial apportionment of the state for members of the general assembly, have made an apportionment, they can not be required, by mandamus or otherwise, to make another apportionment, unless the apportionment as made so far disregards the principles prescribed by the constitution as to warrant the court in saying that it is no apportionment and should be treated as a nullity: State, ex rel., v. Campbell, 48 O. S. 435.

1 Debates, 460; 2 Debates, 7, 708, 767, 782, 846, 863, 870.

JUDICIAL APPORTIONMENT.

Judicial purposes.

SECTION 12. For judicial purposes, the state shall be apportioned as follows:

First district.

The county of Hamilton, shall constitute the first district, which shall not be subdivided; and the judges therein, may hold separate courts or separate sittings of the same court, at the same time.

Second district.

The counties of Butler, Preble, and Darke, shall constitute the first subdivision; Montgomery, Miami, and Champaign, the second; and Warren, Clinton, Greene, and Clark, the third subdivision, of the second district; and, together, shall form such district.

Third district.

The counties of Shelby, Auglaize, Allen, Hardin, Logan, Union, and Marion, shall constitute the first subdivision; Mercer, Van Wert, Putnam, Paulding, Defiance, Williams, Henry, and Fulton, the second; and Wood, Seneca, Hancock, Wyandot, and Crawford, the third subdivision, of the third district; and, together, shall form such district.

Fourth district.

The counties of Lucas, Ottawa, Sandusky, Erie, and Huron, shall constitute the first subdivision; Lorain, Medina, and Summit, the second; and the county of Cuyahoga, the third subdivision, of the fourth district; and, together, shall form such district.

Fifth district.

The counties of Clermont, Brown, and Adams, shall constitute the first subdivision; Highland, Ross, and Fayette, the second; and Pickaway, Franklin, and Madison, the third subdivision, of the fifth district; and, together, shall form such district.

The counties of Licking, Knox, and Delaware, shall constitute the first subdivision; Morrow, Richland, and Ashland, the second; and Wayne, Holmes, and Coshocton, the third subdivision, of the sixth district; and, together, shall form such district. Sixth district.

The counties of Fairfield, Perry, and Hocking shall constitute the first subdivision; Jackson, Vinton, Pike, Scioto, and Lawrence, the second; and Gallia, Meigs, Athens, and Washington, the third subdivision, of the seventh district; and, together, shall form such district. Seventh district.

The counties of Muskingum and Morgan, shall constitute the first subdivision; Guernsey, Belmont, and Monroe, the second; and Jefferson, Harrison, and Tuscarawas, the third subdivision, of the eighth district; and, together, shall form such district. Eighth district.

The counties of Stark, Carroll, and Columbiana, shall constitute the first subdivision; Trumbull, Portage, and Mahoning, the second; and Geauga, Lake, and Ashtabula, the third subdivision, of the ninth district; and, together, shall form such district. Ninth district.

Cited: District Court Case, 34 O. S. 431; State, ex rel., v. McCarty, 52 O. S. 363.

2 Debates, 823, 824, 840, 841, 846, 847, 863, 870.

SECTION 13. The general assembly shall attach any new counties, that may hereafter be erected, to such districts, or subdivisions thereof, as shall be most convenient. New counties attached.

“This section very clearly applies to any new county erected after the adoption of the constitution by the convention. This construction does not require any effect to be given to the constitution before the first of September, but after it has taken effect, it directs the general assembly what to do with counties erected after the tenth of March, or, in other words, it imperatively requires the general assembly, acting under the constitution, to attach all counties created after that date, to some convenient district and subdivision”: State, ex rel., v. Dudley, 1 O. S. 437.

2 Debates, 824, 847, 863, 870.

ARTICLE XII.

FINANCE AND TAXATION.

SECTION 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value. (As amended September 3, 1912.) Poll tax.

Vote: “Yes,” 269,039; “No,” 248,864

Original § 1 read as follows: “Sec. 1. [Poll tax.] The levying of taxes, by the poll, is grievous and oppressive; therefore, the general assembly shall never levy a poll tax, for county or state purposes. (See Const. 1802, Art. VIII, § 23.)”

See Const. 1802, Art. VIII, § 23.

Cited: Slatmyer v. Springborn, 1 O. N. P. (N.S.) 157.

The provisions of Art. XII, of the constitution of Ohio, are not grants of power to the legislature, but limitations and restrictions on the general powers conferred by Art. II, § 1. Thus, Art. XII, which relates to taxation, is not a delegation of authority to raise revenue, but a limitation of that power as conferred by Art. II, § 1: Telegraph Co. v. Mayer, 28 O. S. 521.

In forming the constitution of this state, the necessity for taxation was recognized on the one hand, and the dangers incident to the exercise of the power on the other; and to provide what was necessary for the one, and against the dangers of the other, Art. XII, of the present constitution was adopted. It prohibits one form of odious taxation and forbids the contracting of debts by the state for internal improvements, which might be so used as to create a necessity for oppressive taxation: *Chamberlain v. Cleveland*, 34 O. S. 551.

This section forbids a poll tax of a possible method of taxation: *Adler v. Whitbeck*, 44 O. S. 539.

The prohibition upon a poll tax shows that the property, and not the person of the owner, is the subject of taxation: *Creech v. Railway*, 2 O. N. P. 164, 3 O. D. (N.P.) 265.

The sum demanded for a license to pursue an employment, if used as a means of supplying the public treasury, is held to be tax on such employment: *Mays v. Cincinnati*, 1 O. S. 268; *Cincinnati v. Bryson*, 15 O. 625; *Cincinnati v. Buckingham*, 10 O. 257; *State v. Proudfit*, 3 O. 63; *State v. Hibbard*, 3 O. 63.

A sum exacted for the privilege of practicing the profession of attorney was apparently regarded as a valid tax in *State v. Hibbard*, 3 O. 63.

In *State v. Proudfit*, 3 O. 63, the state was allowed to recover a sum charged upon the defendant for the privilege of practicing medicine.

The city council of Cincinnati has power to license and regulate draymen; and may require a reasonable sum, by way of excise, on the special employment: *Cincinnati v. Bryson*, 15 O. 625.

A charge of twenty-five cents per market day for occupying a place in the city market, or in a street near to, with a wagon during market hours, was said to be the price demanded for accommodations provided to the frequenters of the market, by the city authorities: *Cincinnati v. Buckingham*, 10 O. 257.

The fourth section of the act of March 31, 1864 (61 v. 110), "to organize and discipline the militia of Ohio," which provides that "all persons subject to military duty, and who are not members of some volunteer organization, shall either become members of some volunteer organization, or shall pay into the county treasury, annually, the sum of four dollars, which sum shall be a commutation for fines and penalties for neglect to perform military service," etc., is not in conflict with this section. Such commutation is not a tax, but is only a means, or instrumentality, by which the general assembly enforces, to the extent deemed necessary, the performance of military duty enjoined by Art. IX, § 1: *Houston v. Wright*, 15 O. S. 318.

A statute which requires a specific amount of labor upon public highways is valid (see G. C. § 3376): *Dennis v. Simon*, 51 O. S. 233.

Where public money, in the custody of a public officer of this state, and with the disbursement of which money he is charged by law, is stolen or otherwise lost without his fault, and the legislature pass an act exonerating such officer and his sureties from the payment of such money, and direct that a tax be levied in the territory upon which the loss must fall to meet the deficit, such an act is not forbidden by the constitution, state or federal: *Board of Education v. McLandsborough*, 36 O. S. 227.

1 Debates, 513; 2 Debates, 34, 35, 119, 651, 723, 744-747, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

Taxation by uniform rule; exemption.

SECTION 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or

repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law. (Amended September 3, 1912.)

Vote: "Yes," 269,039; "No," 248,864.

Section 2, as amended November 7, 1905, read as follows: "Sec. 2. [Taxation by uniform rule: exemption.] Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting bonds of the state of Ohio, bonds of any city, village hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds shall be exempt from taxation; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law. [As amended November 7, 1905; in effect January 1, 1906: 97 v. 652.]"

The vote adopting this amendment was "Yes," 655,508; "No," 139,062.

Original § 2 read as follows: "Sec. 2. [Taxation by uniform rule.] Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law."

- I. Applied, cited, construed, referred to, etc.**
- II. Scope and effect.**
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 - A. Uniformity and equality.
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 - 1. Banks.
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- 4. Railways.
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- VI. Moneys and credits.**
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- XI. Exemptions.**
 - A. Property of municipal corporations.
 - B. School property.
 - C. Public worship.
 - D. Institutions of purely public charity.
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I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

McGill v. State, 34 O. S. 228; Cleveland v. Heisley, 41 O. S. 670; Marmet v. State, 45 O. S. 63; McNeill v. Hagerty, 51 O. S. 255; Bloomfield v. State, 86 O. S. 253; Goblet Co. v. Findlay, 5 O. C. C. 418, 3 O. C. D. 205; Sherard v. Lindsay, 13 O. C. C. 315, 7 O. C. D. 245; Flatau v. Mansfield, 14 O. C. C. 592, 7 O. C. D. 39; Mitchell's Administrator v. Commissioners, 5 O. N. P. 158, 5 O. D. (N.P.) 262; State, ex rel., v. Commissioners, 13 O. D. (N.P.) 97; Scott v. Smith, 2 O. N. P. (N.S.) 617, 15 O. D. (N.P.) 590; Watterson v. Halliday, 2 O. N. P. (N.S.) 693, 15 O. D. (N.P.) 277; Whitely v. Arbogast, 6 O. N. P. (N.S.) 313, 17 O. D. (N.P.) 569; State, ex rel., v. Kilgour, 8 O. N. P. (N.S.) 617, 19 O. D. (N.P.) 674; Sturges v. Carter, 114 U. S. 224, 5 O. F. D. 428; Insurance Co. v. Commissioners, 99 Fed. 486, 13 O. F. D. 198.

II. SCOPE AND EFFECT.

It was at first held that the state could make a valid contract, limiting its power to tax: State v. Commercial Bank, 7 O. (pt. 1) 125.

It was subsequently held that the power of taxation is a part of the legislative sovereignty of the state, and is not the subject of contract, of barter, or sale by the legislature; and if the legislature were to attempt to make such contract, it would be a fraud upon the govern-

ment, and of necessity void: *Bank v. Debolt*, 1 O. S. 591; see, to the same effect, *Debolt v. Trust Co.*, 1 O. S. 563; *Knoup v. Piqua Bank*, 1 O. S. 603; *Toledo Bank v. Bond*, 1 O. S. 622; *Plank Road Co. v. Husted*, 3 O. S. 578; *Bank v. Wilbor*, 7 O. S. 481; *Skelly v. Bank*, 9 O. S. 606.

The supreme court of the United States, however, held such contracts to be valid: *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Bank v. Debolt*, 59 U. S. (18 How.) 380; *Bank v. Thomas*, 59 U. S. (18 How.) 384; *Piqua Bank v. Knoop*, 57 U. S. (16 How.) 369.

The supreme court of Ohio eventually yielded to the authority of the supreme court of the United States upon the specific statutory contracts for exemption, which had been considered by the supreme court of the United States: *State, ex rel., v. Moore*, 5 O. S. 444; *Bank v. Lewis*, 5 O. S. 447.

This section does not tax property; it only provides that laws shall be passed taxing all property, real and personal, by a uniform rule according to its true value in money. Neither does this section attempt to exempt property from taxation, but it defines what property may be exempted by general laws of the legislature: *Martindill v. Sanger*, 8 O. N. P. 506, 11 O. D. (N.P.) 727.

"It has been said: 'In regard to taxation, equality is the great idea of the constitution. Inequality was the pre-existing evil; equality is the remedy.' *Bank v. Hines*, 3 O. S. 1. But this idea was directed to property. The anxiety was, that no property should escape its proper and equal burthen. It is well known, that with difficulty any exemption, even of things regarded most sacred, was secured. Section 22, of Art. XII, and other sections of the same article, clearly show this anxiety. The things in contemplation were property of every possible description, and an equal and uniform tax upon that property, according to its true value in money. The exemptions to be allowed from that tax are specially enumerated. If there be a species of taxation, or a subject-matter for taxation, not embraced in that section, there is nothing in it by which they are prohibited or excluded. Laws taxing property must certainly conform with that section": *Baker v. Cincinnati*, 11 O. S. 534.

"Before the adoption of the present constitution the whole matter of taxation was committed to the discretion of the general assembly. It might be levied upon such property and in such proportion as that body saw fit. The right to make exceptions and exemptions was unquestionable. But this discretion no longer exists. The public burdens are made to rest upon the property of the state, and whenever money is to be raised by taxation, the positive injunction is, that 'laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money.' Without express authority of law, no tax, either for state, county, township, or corporation purposes, can be levied; and we see no reason to doubt that this section of the constitution is equally applicable to, and furnishes the governing principle for, all laws authorizing taxes to be levied for either purpose. The great object of the provision was to secure equality and uniformity in the imposition of these public burdens. The convention was very well aware that much the largest part would be required to answer the purposes of these local subdivisions; and equally well that it could only be levied as the general assembly should provide. In establishing this principle of justice and equality, they have necessarily made it the fundamental rule upon which all such laws must be based; and its spirit and purpose can only be preserved by holding that it requires a uniform rate per cent. to be levied upon all property, according to its true value in money, within the limits of the local subdivision for which the revenue is collected; subject only to the exemptions specially provided for in this section": *Zanesville v. Richards*, 5 O. S. 589.

In construing the constitution, we must make it harmonize and give effect to all its provisions. In § 2, Art. XII, reference is made to general burdens imposed for the support of the government and the general benefit, while in § 6, Art. XIII, there is special benefit to be derived: *Hill v. Higdon*, 5 O. S. 243.

Where taxation is spoken of in § 2, Art. XII, reference is made to the general burdens, imposed for the purpose of supporting the government, the revenue raised being expended for the equal benefit of the public at large: *Hill v. Higdon*, 5 O. S. 243.

Section 2, Art. XII, of the state constitution, merely names the subjects of taxation, and makes no limitation as to their situs, or ownership: *Worthington v. Sebastian*, 25 O. S. 1.

The provisions of this section, construed with other parts of the constitution, give rise to a clear and plain implication, that it was not the design of the framers of the constitution, or of the people in adopting it, to withhold the power to provide such local or special laws as public necessities might require: *McGill v. State*, 34 O. S. 228.

In a case involving the construction of the provisions of the acts relating to taxes for road purposes, it was said: "We need not deter-

mine whether the commissioners are required or permitted to expend any portion of the tax in Lima. They have exclusive power over the fund. . . . The people of the whole county are supposed to have an interest in the public highways. The particular condition of things which called for the imposition of the tax is unknown to us, but we are bound to assume it justified a levy on all the taxable property of the county; and we are not warranted in saying that it would be a violation of the constitution to tax the citizens of Lima, in common, with the people throughout the county, for the repair of roads on which the prosperity of the corporation may largely depend": *Lima v. McBride*, 34 O. S. 338.

This section does not prevent the legislature from obtaining general revenue from other sources than taxation on property: *Alter v. Cincinnati*, 56 O. S. 47.

III. SOURCE OF POWER TO TAX.

The power of taxation is included in the legislative power. In our former constitution it is limited in one particular, the prohibition of a poll tax. In the present, it is regulated or limited in other particulars. Section 2, of Art. XII, is not a grant of power, but a regulation of the power already granted in the first section of the second article. The expression is, "laws shall be passed," not that the 'general assembly shall have the power to pass.' So of every provision in the twelfth article, they either prohibit or regulate the exercise of the power of taxation in specified instances: *Baker v. Cincinnati*, 11 O. S. 534.

The provisions of this article are not grants of power to the legislature, but limitations and restrictions on the general powers conferred by § 1, Art. II: *Telegraph Co. v. Mayer*, 28 O. S. 521.

The power of taxation is limited, but not conferred by § 2, Art. XII, of the constitution. The limitation is on the power to raise revenue by the taxation of property; all other recognized modes may be resorted to by the legislature. The power of taxation is included in the legislative power conferred on the general assembly by § 1, Art. II, of the constitution: *Adler v. Whitbeck*, 44 O. S. 539.

This section is not a grant of power, but a regulation or limitation rather, of the taxing power comprised in the general legislative power of the state vested in the general assembly: *Anderson v. Brewster*, 44 O. S. 576.

That this section is a limitation and not a grant of power, see, also, *Board of Education v. State*, 51 O. S. 531.

It was, however, said in *Tafel v. Lewis*, 75 O. S. 182, that the mandate of this section was a warrant for the taxation of property in this state.

This section does not prevent the general assembly from compelling municipal corporations to levy taxes to install a sewage purification plant: *Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113].

Within constitutional limitations the remedy for any abuse in taxation is political and not judicial: *Hulbert v. Roth*, 11 O. N. P. (N.S.) 397.

IV. WHAT CONSTITUTES TAXING.

A. General revenue. The property of every person, however, absolute the tenure by which it is held, must be liable to bear an equal and just proportion of the public burdens, by way of taxation, in return for the protection and advantages afforded by the government, and that proportion of taxation must be determined by the legislative power, which extends to all persons and property within the state: *Bank v. Bond*, 1 O. S. 622.

This section applies to all taxes for the purpose of general revenue whether for the state, the county, the township or municipal corporation: *Zanesville v. Richards*, 5 O. S. 589; see, to the same effect, *Hill v. Higdon*, 5 O. S. 243; *Reeves v. Treasurer*, 8 O. S. 333; *Baker v. Cincinnati*, 11 O. S. 534; *Gas Light Company v. State*, 18 O. S. 237; *State, ex rel. v. Frame*, 39 O. S. 399.

This section is not intended to restrict the income of municipal corporations to the proceeds of general taxation: *State, ex rel., v. Frame*, 39 O. S. 399; *Alter v. Cincinnati*, 56 O. S. 47.

A statute providing that county officials in certain counties, shall be paid specific compensation and with the excess of fees collected over and above such compensation should be paid into the county treasury, was not rendered invalid by this section: *State, ex rel., v. Yates*, 21 O. C. C. 686, 12 O. C. D. 298 [reversed, on other grounds, in *State, ex rel., v. Yates*, 66 O. S. 546].

Where public money in custody of a public officer of the state, and with the disbursement of which money he is charged by law, is stolen or otherwise lost without his fault, and the legislature pass an

act exonerating such officer and his sureties from the payment of such money, and direct that a tax be levied in the territory upon which the loss must fall to meet the deficit, such act is not forbidden by the constitution: *Board of Education v. McLandsborough*, 36 O. S. 227.

The legislature may compel a county to pay a legal obligation. Therefore, a claim having been established as a moral obligation of a county, the act requiring the county to pay it is not unconstitutional, as not levying taxes upon all the taxable property of the state: *Insurance Co. v. Commissioners*, 106 Fed. 123, 45 C. C. A. 233, 12 O. F. D. 619 [affirmed, *Insurance Co. v. Commissioners*, 99 Fed. 846, 13 O. F. D. 198].

B. License, franchise, and excise taxes. The purpose of the Ohio constitution and statutes passed in pursuance thereof, is to tax by a uniform rule all property owned or held within the state; and a narrow construction of a statute, which will defeat this purpose, will not be adopted, where any other is possible. The tax which foreign insurance companies are required to pay in Ohio, is not a tax on property, but a tax for the privilege of doing business in the state: *Scottish Union v. Bowland*, 196 U. S. 611, 14 O. F. D. 543; *Telegraph Co. v. Mayer*, 23 O. S. 521.

A license is not property and can not be taxed as such: *Bank v. Hines*, 3 O. S. 1; *Baker v. Cincinnati*, 11 O. S. 534; *Gas Co. v. State*, 18 O. S. 237.

Neither Art. XII, § 2, nor Art. XII, § 5, in terms, prohibits the granting of licenses and making a charge therefor, or the imposition of a tax on a license. The second requires the taxing of all property by a uniform rule: *Baker v. Cincinnati*, 11 O. S. 534.

This section does not prevent the charge of a license fee for the exercise of special rights and privileges: *Bank v. Hines*, 3 O. S. 1; *Baker v. Cincinnati*, 11 O. S. 534; *Gas Co. v. State*, 18 O. S. 243.

"We have several other laws imposing and authorizing charges on particular branches of business through the medium of licenses, which can be obtained only by paying for them; which laws are supposed to be in full force, and the validity of which, so far as I know, have never been questioned": *Gas Light & Coke Co. v. State*, 18 O. S. 237.

This section does not render invalid a tax upon the business of dealing in intoxicating liquors: *State, ex rel., v. Frame*, 39 O. S. 399; *Anderson v. Brewster*, 44 O. S. 576; *Senior v. Ratterman*, 44 O. S. 661.

This section does not render invalid a statute which taxes cigarettes: *Metz v. Hagerty*, 51 O. S. 521.

A per capita tax on dogs is not inhibited by the constitution. Where the purpose of a statute, imposing such tax, is the protection of wool-growers, it is an exercise of the police power, and not the taxing power vested in the general assembly: *Holst v. Roe*, 39 O. S. 340.

The general assembly has power (except as limited by § 18, of the schedule to the constitution) to regulate occupations by license, and to compel, by imposition of a fine, payment of a reasonable fee, where a special benefit is conferred by the public upon those who follow an occupation, or where it is injurious or dangerous to the public. Accordingly, statutes which authorize municipal corporations to impose license fees upon livery stables, dealers in secondhand articles and upon theatres, are valid: *Marmet v. State*, 45 O. S. 63.

A statute which charges a certain percentage of the capital stock of corporations which consolidate, is not rendered invalid by this section: *Ashley v. Ryan*, 49 O. S. 504 [affirmed in *Ashley v. Ryan*, 153 U. S. 436, 8 O. F. D. 215].

A charge of a certain percentage of the capital stock of a corporation, is a franchise tax and not a tax upon property, and is valid and constitutional: *Southern Gum Co. v. Laylin*, 66 O. S. 578.

Under this section, G. C. § 5449 was held to be unconstitutional in *Express Co. v. Poe*, 61 Fed. 470, 8 O. F. D. 184.

The power to impose taxes is a legislative power, and is vested in the general assembly by § 1, of Art. II, of the constitution: *State, ex rel., v. Guilbert*, 70 O. S. 229.

This section is a limitation upon the taxing power, so far as the same applies to taxation of property, both as to the method of taxation and the character and amount of property which may be lawfully exempted from taxation, and furnishes the governing principle for all laws authorizing taxes for general revenue on property. But this section has no application to taxes known as excise taxes: *State, ex rel., v. Guilbert*, 70 O. S. 229.

The act of April 25, 1904, entitled, "An act to impose a tax upon the right to succeed or inherit property," being a tax not upon property, but upon the right to inherit or succeed to property; the power to enact the same is not affected by the limitations of this section of the constitution: *State, ex rel., v. Guilbert*, 70 O. S. 229.

An ordinance which imposes a license fee of \$300 on temporary stores and transient dealers is invalid, because prohibitive as to some

classes, unreasonable as to others, and in restraint of trade: *Uhrlaub v. Cincinnati*, 8 O. C. C. (N.S.) 505, 18 O. C. D. 797 [affirmed, without report, *Cincinnati v. Uhrlaub*, 72 O. S. 667].

A charge upon gas companies in the state for the purpose of paying the expense of an inspector of gas meters, was held to be valid and constitutional: *Gas Light & Coke Co. v. State*, 18 O. S. 237.

Although the assessment or charge upon gas companies of the state, imposed by the statute in question may be a tax, in the widest import of the word, it certainly is not a tax for purposes of general revenue. The charge or assessment here is not a tax on property, but rather a charge upon individual corporations; and the business in which they are engaged. And it by no means follows, that because the state is compelled to tax all property by a uniform rule, that it is therefore cut off from all power to lay assessments and charges for exceptional and special purposes, coming clearly within the general legislative power conferred by the constitution upon the general assembly: *Gas Light & Coke Co. v. State*, 18 O. S. 237.

The act of April 23, 1894 (91 O. L. 173), to prevent and punish fraud in sales of wearing apparel, at public or private sale, by itinerant vendors, and to regulate all such sales, is not rendered unconstitutional by this section: *Ex parte Mosler*, 4 O. C. D. 82.

C. Assessments. An assessment levied for local improvements upon land benefited thereby and in proportion to the special benefits conferred upon such land by such improvement, is not a tax, within the meaning of this section and is not rendered invalid thereby: *Zanesville v. Richards*, 5 O. S. 589; *Reeves v. Treasurer*, 8 O. S. 333; *Thompson v. Treasurer*, 11 O. S. 678; *Sessions v. Crunkilton*, 20 O. S. 349; *Chamberlain v. Cleveland*, 34 O. S. 551; *Lima v. Cemetery Association*, 42 O. S. 128.

Section 2, of Art. XII, has established the principles upon which all taxes for general revenue purposes must be levied; but it does not extend to what was then, and is still, well known as special assessments, because § 6, of Art. XIII, shows that they were not intended to be included: *Hill v. Higdon*, 5 O. S. 243.

A law taxing only property within one-half mile of a proposed road improvement, is valid: *Carlisle v. Hetherington*, 47 O. S. 235; *State, ex rel., v. Commissioners*, 17 O. S. 558.

D. Water rents. Water rents are not taxes on property within the meaning of this article: *Alter v. Cincinnati*, 56 O. S. 47.

E. Collection of taxes. The power of taxation, included in the legislative power vested in the general assembly by Art. II, § 1, of the constitution, is indeed wisely regulated and limited by that instrument; but we may ask, what avails the power of taxation, if there is no commensurate power to collect taxes and assessments when imposed: *Anderson v. Brewster*, 44 O. S. 576.

A statute which is simply designed to compel all to contribute proportionately to the support of the common government is not invalid under this provision: *Musser v. Adair*, 55 O. S. 466.

This section does not render invalid a law which provides for the employment of a tax inquisitor: *McGoldrick v. Lewis*, 12 O. D. (N.P.) 46.

V. UNIFORM RULE.

A. Uniformity and equality. A statute on the subject of taxation must be construed, if possible, so as to avoid inequality: *Zanesville v. Richards*, 5 O. S. 589.

This section forbids exemptions of property not authorized by the constitution: *Zanesville v. Richards*, 5 O. S. 589.

A statute which authorizes persons engaged in certain kinds of business to deduct credits, but does not permit such deduction to be made by others, is unconstitutional: *Bank v. Hines*, 3 O. S. 1; *Latimer v. Morgan*, 6 O. S. 279.

The property of every person, however, absolute the tenure by which it is held, must be liable to bear an equal and just proportion of the public burdens, by way of taxation. In return for the protection and advantages afforded by the government, and that proportion of taxation, must be determined by the legislative power, which extends to all persons and property within the state: *Bank v. Toledo*, 1 O. S. 622.

The fact that property subject to taxation has not been listed, although it improperly increases the burden of taxation on the property that is listed, does not render the tax wholly void, or authorize the interference of a court of equity: *Bank v. Hines*, 3 O. S. 1.

The rule or principle, of unequal valuation of different classes of property for taxation, adopted by local boards of assessment, is in conflict with the constitution of Ohio, and works manifest injustice to the owners of bank shares: *Bank v. Hines*, 3 O. S. 1.

An express direction to impose a tax on all property by a uniform rule, does not necessarily exclude taxation upon that which is not property, or cover the whole ground included within the limits of the taxing power: *Zanesville v. Richards*, 5 O. S. 589; *Gas Light & Coke Co. v. State*, 18 O. S. 237.

Section 3, of the act of April 6, 1866, "for the inspection of gas meters," etc. (63 v. 164), providing that the salary of the inspector of gas meters and illuminating gas shall be paid by the several gas light companies in this state, in amounts proportionate to their appraised valuation, is not in conflict with this section: *Gas Light & Coke Co. v. State*, 18 O. S. 237.

The act of April 6, 1866, "to provide for the valuation of lands in new town plats, or additions thereto" (S. & S. 762), applies to cases where lands within the corporate limits of a city or town are laid out into lots, streets, etc., as well as to cases where the lands so laid out are situate without the corporate limits. This act is not in conflict with the provisions of § 2, Art. XII, of the constitution: *Mitchell & Watson v. Treasurer*, 25 O. S. 143.

Statutory provisions whereby different classes of property are listed and valued for taxation in and by different modes and agencies, are not necessarily in conflict with this section: *Wagoner v. Loomis*, 37 O. S. 571.

The levying of a tax to refund assessments, as provided in G. C. § 9267, et seq., is a constitutional exercise of the taxing power: *Warder v. Commissioners*, 38 O. S. 639.

General Code § 5379, which requires dogs to be listed for taxation, is a valid exercise of the taxing power: *Holst v. Roe*, 39 O. S. 340.

This section does not render invalid the levy of a tax upon the property of a county, for the purpose of paying the compensation of officials in such county: *Holtz v. Commissioners*, 41 O. S. 423.

The method provided in subdivision 16, of G. C. § 5376, for estimating the taxable value of property converted during the year into nontaxable securities, is not in conflict with § 2, of Art. XII, of the constitution, which requires that laws shall be passed, taxing all property by a uniform rule, according to its true value in money: *Shotwell v. Moore*, 45 O. S. 632.

An act (88 v. 353; act of April 23, 1891) which authorizes any county to raise money by taxation to secure the location of the Ohio agricultural experiment station, is void: *Wasson v. Commissioners*, 49 O. S. 622.

An act whereby the auditor receives a fee of four per cent. for correcting a false return, does not disqualify him from acting in the case, and is a legitimate way of securing uniformity of taxation: *Probasco v. Raine*, 50 O. S. 378.

Under former statutes it was said that an assessment in excess of the cost of the improvement, imposed a burden not warranted by law and opposed to the system of taxation provided in the constitution: *Groesbeck v. Cincinnati*, 51 O. S. 365.

Although a special taxing district may be created, yet an act providing higher education in counties containing cities of the first grade, of the first class, and making provision for different tax levies within the district is void: *Root v. Board of Education*, 52 O. S. 589.

The erection of an armory for the use of the national guard is a general purpose of the state, and taxes for this purpose must be levied according to this section: *Hubbard v. Fitzsimmons*, 57 O. S. 436; see, also, *State, ex rel., v. Kreighbaum*, 9 O. C. C. 619, 6 O. C. D. 654 [affirmed, without report, *State, ex rel., v. Commissioners*, 54 O. S. 615].

This section does not render invalid a statute which authorizes licensing transient traders under municipal corporations; although such statute is rendered invalid in Art. I, § 1, and Art. I, § 2: *Flatau v. Mansfield*, 14 O. C. C. 592, 7 O. C. D. 39.

This section does not render invalid a statute which makes a county liable for mob violence: *Commissioners v. Church*, 62 O. S. 318 [affirming *Mitchell v. Commissioners*, 10 O. C. D. 801, which reversed *Mitchell v. Commissioners*, 5 O. N. P. 158, 5 O. D. (N.P.) 262, and reversing *Caldwell v. Commissioners*, 15 O. C. C. 167, 8 O. C. D. 56, which affirmed *Caldwell v. Commissioners*, 4 O. N. P. 249, 6 O. D. (N.P.) 367].

Taxation laws do not attempt to arrive at exact equality, nor to provide that equivalents shall be of exactly the same value. A substantial equality is all that they attempt to reach: *Trust Company v. Lander*, 10 O. C. D. 452.

A law which imposes the burden of taxation upon teachers as a class of citizens for the purposes of a teachers' pension fund, is not taxing by a uniform rule, as required by § 2, Art. XII, of the constitution. Therefore, the act (92 O. L. 685) constitutes a taking of property without due process of law: *State v. Hubbard*, 22 O. C. C. 252, 12 O. C. D. 87 [affirmed, without report, *Hibbard v. State*, 65 O. S. 574]; see, to same effect, *Venable v. Schafer*, 7 O. C. C. (N.S.) 337, 18 O. C. D. 202.

An owner of a building, which he himself has torn down, is entitled under G. C. § 2591, to have the county auditor deduct from the tax duplicate the value of such building at any time between the second day of April and the first day of October, as provided in the statute. This statute does not violate the provisions of § 2, Art. XII, constitution, as to uniformity of rates of taxation: *State, ex rel., v. Wright*, 8 O. C. C. (N.S.) 366, 18 O. C. D. 697.

This section requires the property of corporations to be taxed as is other property: *Creech v. Railroad*, 2 O. N. P. 164, 3 O. D. (N.P.) 265.

The presumption is that all personal property is taxed by a uniform rule in compliance with this constitutional provision: *Huddleston v. Haggerty*, 2 O. N. P. 291, 1 O. D. (N.P.) 331.

Gross inequality is a relative term. It has no fixed meaning but varies with varying circumstances. Small additions or small reductions of tax values may become necessary by reason of gross inequality, when compared to other pieces of property, as well as to numerous other conditions which must be taken into consideration by the reviewing boards: *Ludlow v. Lewis*, 6 O. N. P. 513, 9 O. D. (N.P.) 600.

The appropriate mode of relief in such cases is, upon payment of the amount of tax which is equal to that assessed on other property, to enjoin the collection of the illegal excess (*Waite, C. J., dissenting*): *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578.

When a rule of valuation is adopted which is intended to operate unequally, and is applied, not solely to one individual, but to a large class of individuals or corporations, equity will interfere to restrain the operation of the unconstitutional exercise of power: *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578.

The rule, or principle, of unequal valuation of different classes of property for taxation, adopted by local boards of assessment, is in conflict with the constitution of Ohio, and works manifest injustice to the owners of bank shares: *Bank v. Hines*, 3 O. S. 1 [approved and followed, *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578].

The decision in the case of the Exchange Bank of Columbus v. Hines, Treasurer, 3 O. S. 1, giving a construction to the second and third sections of Art. XII, of constitution, and declaring unconstitutional and void the tenth section of the tax law of April 13, 1852, was approved and followed in *Latimer v. Morgan*, 6 O. S. 279.

The purpose of the Ohio constitution and statutes passed in pursuance thereof, as frequently declared by the supreme court, is to tax by a uniform rule all property owned or held within the state; and a narrow construction of a statute, which will defeat this purpose, will not be adopted where any other is possible: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543.

A statute which exempts property not authorized by the constitution to be exempt from taxation, is invalid by reason of this section: *Zanesville v. Richards*, 5 O. S. 590; *Hynicka v. Insurance Co.*, 17 O. D. (N.P.) 80.

The legislature of Ohio having passed laws providing for separate state boards of equalization, for real estate, for railroads and for bank shares, but not providing a board to equalize personal property, including all other money capital, the equalization of which is left with the county boards, the statute creating the boards for equalizing bank stock, is not void as a violation of the constitution of Ohio, declaring that laws shall be passed for taxing all property by a uniform rule, according to its true value in money: *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578.

Sections 5599 and 5600, G. C., providing for city decennial boards of revision, are not invalid because in violation of § 26, Art. II; of § 2, Art. XII; Art. XIII, of the constitution. The revision of taxes therein provided for dates back to the original assessment and the rule of uniformity of taxation is not violated, because in certain populous districts the agents of the state, for the purpose of revision, are more numerous, and the time in which to perform their duties is longer than in smaller districts. Nor is the appointment of, or the function performed by these agents the exercise of corporate power: *Scarborough v. Gibson*, 1 O. N. P. (N.S.) 77, 13 O. D. (N.P.) 738.

A statute which provides for a board of equalization in a city of the second grade, of the first class, with power substantially different from those possessed by like boards in other cities, is invalid as being a violation of Art. II, § 26, of the Ohio constitution: *Gaylor v. Hubbard*, 56 O. S. 25 [reversing *Gaylord v. Hubbard*, 12 O. C. C. 112, 5 O. C. D. 529].

B. Specific illustrations.

1. Banks. A statute which authorizes bankers to make deductions of their debts, which other persons are not authorized to make, is unconstitutional: *Bank v. Hines*, 3 O. S. 1; *Ellis v. Linck*, 3 O. S. 66; *Latimer v. Morgan*, 6 O. S. 280.

The state has power to tax shares in the national banks located in Ohio, subject to the limitations that such tax shall not exceed the rate imposed upon other moneyed capital of individuals, nor that imposed upon shares in the state banks, as provided in the act of congress of June 3, 1864: *Frazer v. Siebern*, 16 O. S. 614.

An act which provides in the return for taxation of unincorporated banks and bankers, that the aggregate sum of the first five items therein enumerated, the county auditor shall deduct the aggregate sum of the fifth, sixth, seventh and such portions of the eighth as are exempt, is valid, except to the extent of including the entire third item, among those from which the deduction is to be made: *Treasurer v. Bank*, 47 O. S. 503.

A law compelling the return and taxation of savings by depositors in savings banks is valid: *Collett v. Savings Society*, 13 O. C. C. 131, 7 O. C. D. 146 [affirmed, without report, *Collett v. Savings Society*, 56 O. S. 776].

There is no constitutional requirement that property employed by bankers, of different classes, should be taxed by a uniform rule, except that each must conform to the same standard, and that standard is "the burden of taxation imposed upon the property of individuals": *Patton v. Bank*, 7 O. N. P. 401, 10 O. D. (N.P.) 321.

For the validity of a tax law applicable to banks and changing the rate of taxation from that fixed by their charters, see *Woolsey v. Dodge*, 6 McLean, 142, Fed. Cas. 18032, 3 O. F. D. 228.

It was at first held that the state could make a valid contract, limiting its power to tax: *State v. Commercial Bank*, 7 O. (pt. 1) 125.

It was subsequently held that the power of taxation is a part of the legislative sovereignty of the state, and is not the subject of contract, of barter, or sale by the legislature; and if the legislature were to attempt to make such contract, it would be a fraud upon the government, and of necessity void: *Bank v. Debolt*, 1 O. S. 591; see, to the same effect, *Debolt v. Trust Co.*, 1 O. S. 563; *Knoup v. Piqua Bank*, 1 O. S. 603; *Toledo Bank v. Bond*, 1 O. S. 622; *Plank Road Co. v. Husted*, 3 O. S. 578; *Bank v. Wilbor*, 7 O. S. 481; *Skelly v. Bank*, 9 O. S. 606.

The supreme court of the United States, however, held such contracts to be valid: *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Bank v. Debolt*, 59 U. S. (18 How.) 380; *Bank v. Thomas*, 59 U. S. (18 How.) 384; *Piqua Bank v. Knoop*, 57 U. S. (16 How.) 369.

The supreme court of Ohio eventually yielded to the authority of the supreme court of the United States, upon the specific statutory contracts for exemption, which had been considered by the supreme court of the United States: *State, ex rel., v. Moore*, 5 O. S. 444; *Bank v. Lewis*, 5 O. S. 447.

2. Inheritance tax. An inheritance tax which applies only to estates exceeding twenty thousand dollars, and which imposes a higher rate of taxation upon large estates than is imposed upon small estates, is unconstitutional, but apparently not by reason of this section, but rather by reason of Art. I, § 2, of the Ohio constitution: *State, ex rel., v. Ferris*, 53 O. S. 314 [affirming *State, ex rel., v. Ferris*, 9 O. C. C. 298, 6 O. C. D. 158].

That an inheritance tax is not invalidated by this section, see *State, ex rel., v. Guilbert*, 70 O. S. 229; *Executors v. State*, 72 O. S. 448; see, also, *Friend v. Levy*, 76 O. S. 26; *Chamberlain v. Stecher*, 78 O. S. 271.

3. Telephone, telegraph and express companies. A law requiring express, telegraph and telephone companies to return certain property for taxation is valid, and does not contravene this section: *State, ex rel., v. Jones*, 51 O. S. 492.

"The general grant of legislative power vested in the general assembly by Art. II, § 1, of the constitution, includes the power to collect revenue for public purposes, and the limitations on the exercise of this power are to be found in other provisions of that instrument and in the constitution of the United States. The provisions of Art. XII, of the constitution of Ohio, are not grants of power to the legislature, but limitations and restrictions on the general powers conferred by Art. II, § 1, and, among other things, § 2, of Art. XII, requires that all property subject to taxation shall be taxed by a uniform rule, and according to its true value in money. The privilege that a foreign corporation enjoys by legislative consent of exercising its corporate powers, and of carrying on its business within the state, is not property within the meaning of Art. XII, § 2, of this constitution. The provisions of 'an act for the assessment and taxation of express and telegraph companies' (S. & S. 769-771), as amended, which requires a foreign telegraph company to pay a tax on its gross receipts for the year next preceding the return for assessment, at a rate equal to that on property, and prohibits any person from acting as agent, or transacting any business for such company that is in default of payment,

are, in effect, a charge for the privilege of exercising its franchises and powers within the state, graduated according to the amount of receipts, not in conflict with any of the limitations on the power of taxation vested in the general assembly": *Telegraph Co. v. Mayer*, 28 O. S. 521.

This statute was held constitutional by the supreme court of the United States: *Express Co. v. Auditor*, 165 U. S. 194, 10 O. F. D. 655, 166 U. S. 185, 10 O. F. D. 426; *Sanford v. Poe*, 61 Fed. 449, 8 O. F. D. 158, 64 Fed. 9, 8 O. F. D. 335, 69 Fed. 546, 16 C. C. A. 683, 9 O. F. D. 50.

4. Railways. An act requiring a railroad company or part of railroad, within the state, to pay a license fee of \$1.00 for each mile operated is void: *Railway v. State*, 49 O. S. 189.

5. Highways. We need not determine whether the commissioners are required or permitted to expend any portion of the tax in Lima. They have exclusive power over the fund, and it is "to be expended under their directions, in such manner as may seem to them most advantageous to the interest of any such county, for the construction, reconstruction or repair of any such road or roads," 66 v. 60. The people of the whole county are supposed to have an interest in the public highways. The particular condition of things which called for the imposition of the tax is unknown to us, but we are bound to assume it justified a levy on all the taxable property of the county; and we are not warranted in saying that it would be a violation of the constitution to tax the citizens of Lima, in common with the people throughout the county, for the repair of roads on which the prosperity of the corporation may largely depend: *Lima v. McBride*, 34 O. S. 338.

Act of March 29, 1879, "to authorize the commissioners of certain counties to locate and construct turnpike roads," which exempts certain lands therein named from taxation for the improvements therein provided for, is in conflict with § 2, Art. XII, of the constitution, and is therefore void: *Fields v. Commissioners*, 36 O. S. 476.

In levying a tax for the construction of a road, all property within the taxing district must be taxed by a uniform rule, according to its true value in money: *Bowles v. State*, 37 O. S. 35.

The act of May 16, 1894, entitled, "An act to authorize the county commissioners to provide for the construction, improvement and repair of public highways (91 v. 759), is unconstitutional in this, that its subject-matter is general, while its operation and effect are local. By § 2, Art. XII, the power to pass special laws as to the taxation of property is taken away: *Hixson v. Burson*, 54 O. S. 470.

A statute which authorized and required the commissioners of a certain county to construct a turnpike road under the provision of the one-mile assessment pike statute, and provided that thirty per cent. of the cost of the improvement should be assessed upon the property within one mile of said road, and seventy per cent. of the cost of the improvement should be levied upon all the taxable property of the county, was held to be unconstitutional as in conflict with this section: *Bryan v. Commissioners*, 1 O. D. (N.P.) 661.

6. Street improvement. Where a village which has issued bonds for street improvements is annexed to a city; and the city, for the payment of the bonds, levies a tax on the territory only which was formerly embraced by the village, such an act is not in conflict with Art. XII, of the constitution: *Cleveland v. Heisley*, 41 O. S. 670.

VI. MONEYS AND CREDITS.

That clause of G. C. § 7843 which requires all credits payable in money to be listed for taxation at their face value, being repugnant to this section, is void: *McCurdy v. Prugh*, 59 O. S. 465.

Under this section liabilities can not be deducted from moneys and credits: *Bank v. Hines*, 3 O. S. 1.

Revised Statutes § 2759 was unconstitutional only to the extent of the items set forth therein from which debts might be deducted: *Treasurer v. Bank*, 47 O. S. 503.

To the extent that R. S. § 2759 (repealed, 97 v. 280, § 2), relating to banks, permits cash and cash items in possession to be included in the aggregate from which deductions of debts are to be made, it is repugnant to the constitution and void. The definition of money, as given in G. C. § 5326 in the title on taxation, that it means "any surplus or undivided profits held by the societies for savings, or banks having no capital stock, gold and silver coin or bank notes of solvent banks in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw on demand, applies to banks as well as individuals; under § 2, Art. XII, of the constitution, what is money if the property of an individual, for the purpose of taxation is and must be money if the property of a bank: *Patton v. Bank*, 7 O. N. P. 401, 10 O. D. (N.P.) 321.

Art. XII, § 2. CONSTITUTION OF THE STATE OF OHIO OF 1851.

That debts can not be deducted from shares of stock in a national bank, see *Chapman v. Bank*, 56 O. S. 310; see, also, *Niles v. Shaw*, 50 O. S. 370.

Under the present form of this section, by which bonds of municipal corporations of Ohio are exempt from taxation, it is not necessary, under G. C. § 5376, to list the monthly average amount or value of moneys or credits invested in or converted into bonds of any municipality of this state: *Whitely v. Arbogast*, 9 O. C. C. (N.S.) 584, 19 O. C. D. 595 [appeal from *Whitely v. Arbogast*, 6 O. N. P. (N.S.) 313, 17 O. D. (N.P.) 569].

VII. INVESTMENTS.

A gift of income, or a certain amount payable annually out of the income, the principal fund being taxed, is not an investment so that such gift should be capitalized and taxed in addition to taxes levied upon the principal: *Chisholm v. Shields*, 67 O. S. 374.

VIII. BONDS AND STOCKS.

Bonds and stocks of the state may be taxed if not expressly exempted: *Bank v. Smith*, 7 O. S. 42.

The provisions of the act of May 11, 1878 (75 v. 436; see G. C. § 5322, et seq.), by which an owner of stock in a foreign corporation is required to list the same for taxation, notwithstanding the capital of the corporation is taxed in the state where the corporation is located, are not in conflict with the constitution: *Bradley v. Bauder*, 36 O. S. 28.

Bonds which are deposited by a foreign insurance company in order to do business in this state (see G. C. § 9565), are taxable. The state has power to tax property within its boundaries, irrespective of the domicile of the owner: *Assurance Co. v. Halliday*, 126 Fed. 257, 61 C. C. A. 271, 14 O. F. D. 73, 1 O. L. R. 643 [affirming *Assurance Co. v. Halliday*, 110 Fed. 259, 13 O. F. D. 682].

Under the present form of this section, which exempts municipal bonds from taxation, it is not necessary to list the average amount of money or credit invested in municipal bonds: *Whitely v. Arbogast*, 9 O. C. C. (N.S.) 584, 19 O. C. D. 595 [appeal from *Whitely v. Arbogast*, 6 O. N. P. (N.S.) 313, 17 O. D. (N.P.) 569].

IX. PROPERTY.

The object of the language of the constitution under consideration was comprehension, not exclusion. The words, "all real and personal property," therefore, in § 2, are to be taken in their most comprehensive legal import, including every kind of real and personal whatsoever, not excepting the several classes of personal property expressly mentioned in the first clause of the section: *Bank v. Hines*, 3 O. S. 1.

The shares in national banks thus to be taxed, are to be understood as the individual property or choses of the stockholders, as contradistinguished from aliquot parts of the capital and property of the bank, and, as such, may be taxed at their full value, without deduction for the franchise, for real estate otherwise taxed, or for untaxable bonds owned by the bank: *Frazer v. Siebern*, 16 O. S. 614.

Investments in bonds and stocks of foreign corporations by residents of Ohio may lawfully be taxed in Ohio; and the provisions of the act of April 5, 1859 (2 S. & C. 1438), imposing a tax on such bonds and stocks are not in violation of this section: *Worthington v. Sebastian*, 25 O. S. 1.

The privilege that a foreign corporation enjoys, by legislative consent, of exercising its corporate powers, and of carrying on its business within the state, is not property within the meaning of this section: *Telegraph Co. v. Mayer*, 28 O. S. 521.

An owner, residing in Ohio, of shares of stock in a foreign corporation, is required to list the same for taxation, notwithstanding the capital of the corporation is taxed in the state where the corporation is located (see G. C. § 5324 and G. C. § 5328). The provisions of said statute, subjecting such shares of stock so owned to taxation in this state, are not in conflict with the constitution: *Bradley v. Bauder*, 36 O. S. 28.

Shares of stock in a foreign corporation are taxable, although the corporation is taxed in the state where located, and although the corporation has substantial property in Ohio on which it pays taxes here; nor does it apply to shares of a railroad company which is formed by the consolidation of an Ohio company with companies of other states, notwithstanding such company pays taxes in Ohio on the portion of its property which is situated here: *Lee v. Sturges*, 46 O. S. 153.

Personal property in the possession of an assignee for the benefit of creditors of a manufacturing corporation, which is not being reduced to money for distribution among the creditors of the corporation, but is being held and operated under the orders of the insolvency court,

and at the joint request of the creditors of the assignee, in the conduct of a going business, such business being conducted as it had been heretofore by the corporation itself, is subject to taxation, and it is the duty of the assignee to list such property for taxation: *French v. Bobe*, 64 O. S. 323.

If a corporation has accumulated a surplus and certificates therefor are issued to the stockholders, such certificates are not property within the meaning of this constitutional provision or of the statutes of Ohio: *Adams v. Shields*, 5 O. N. P. 190, 7 O. D. (N.P.) 193.

General Code § 5372, which exempts from further taxation shares of capital stock of any corporation, the capital stock of which is taxed in this state in the name of the company, will not operate to exempt shares of stock owned by citizens of this state in a corporation which is not required to return its capital for taxation here by reason of its nonresidence: *Scott v. Smith*, 2 O. N. P. (N.S.) 617, 15 O. D. (N.P.) 590.

The capital of a corporation, consisting wholly of patent rights issued by the government of the United States, is, by federal authority, exempt from taxation under the taxing power of the state; but shares of the capital stock of such corporation are not exempted by such federal authority, and are subject to the taxing power of the state. In Ohio, shares of stock held by a resident of the state of Ohio in a foreign corporation, doing business wholly without the state, whose capital is wholly patent rights, are not exempt from taxation either by federal authority or under G. C. § 183, et seq., and G. C. § 5372, and must be returned for taxation: *Scott v. Smith*, 2 O. N. P. (N.S.) 617, 15 O. D. (N.P.) 590.

A license is not "property" within the meaning of this section, although a charge may be made therefor: *Bank v. Hines*, 3 O. S. 1; *Baker v. Cincinnati*, 11 O. S. 534; *Gas Light Co. v. State*, 18 O. S. 237.

X. TRUE VALUE IN MONEY.

Choses in action are to be listed at their true value. If a note, for instance, is wholly worthless, it is not to be listed at all. If it is of some value, but less than its face, it is to be listed at what it is worth: *Bank v. Hines*, 3 O. S. 1.

The constitution permits no deduction of liabilities from moneys and credits: *Bank v. Hines*, 3 O. S. 1.

Every citizen is to be taxed upon his property without deduction or exemption, except as provided in Art. XII, § 2, of the constitution: *Ellis v. Linck*, 3 O. S. 66.

This provision is not violated by adding the penalty for a false return to the value and entering the whole on the tax lists instead of adding the penalty to the tax itself: *Gager v. Prout*, 48 O. S. 89.

Promissory notes, book accounts and other credits are property and fall within that provision of § 2, Art. XII, of the constitution of this state, which declares that "all real and personal property" shall be taxed according to its true value in money. Where property has been valued for taxation and taxed at its true value in money, it is no defense against the payment of such tax that all other property within the state, through the mistake or imperfect judgment of the taxing officers and equalizing boards, has been valued for taxation materially below its true value in money: *McCurdy v. Prugh*, 59 O. S. 465.

Where the manufacture of an article of tangible personal property is protected by a patent, and such article when manufactured is not put on the market for sale, but its ownership retained by the manufacturer in himself, and the article leased or rented by him to another for a valuable consideration, payable to him, it should be taxed as his property at "its true value in money," although that value is enhanced by reason of the patent. Its true value in money for taxation is the value that attaches to it in his hands. Earnings or rental value of such article is one of the circumstances to be taken into consideration in ascertaining the true value in money: *State, ex rel., v. Halliday*, 61 O. S. 352.

Our state constitution makes it mandatory upon the lawmaking power that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise;" and also all real and personal property, according to its true value in money. Article XII, § 2, and Art. XIII, § 4, specifically subject "the property of corporations to taxation as other property is taxed": *Creech v. Railroad*, 2 O. N. P. 164, 3 O. D. (N.P.) 265.

As far as the constitution is involved, exact equality of burden is imposed upon all taxable property, whether owned by banks or bankers, or other persons; and further, that all property should be taxed according to its true value in money: *Insurance Co. v. Hard*, 8 O. N. P. 36, 10 O. D. (N.P.) 469.

"Accumulated deferred dividends or undivided profits" of a life insurance company are not in any way a part of the reserve funds, nor are they a debt of the company, and they must be returned for taxation as one of the taxable assets of the company: *Hynicka v. Insurance Co.*, 4 O. N. P. (N.S.) 297, 17 O. D. (N.P.) 80.

XI. EXEMPTIONS.

A. Property of municipal corporations. All exemptions of any private property in a municipal corporation, otherwise subject to taxation, from contributing to the general revenue fund, are in conflict with this section: *Zanesville v. Richards*, 5 O. S. 589.

Gas wells, pipe lines, pumping stations and machinery owned by a municipal corporation and used by it for the conveyance of gas to be consumed by it and by its citizens, are used exclusively for a public use and are exempt from taxation: *Toledo v. Hosler*, 54 O. S. 418 [reversing *Toledo v. Hosler*, 10 O. C. C. 257, 6 O. C. D. 590].

The ownership of lands by a municipal corporation does not bring them within any statutory exemption from taxation unless they are used in the exercise of a municipal function, and this is true, although they are leased by the municipality and the money realized is applied to a public purpose: *Cincinnati v. Lewis*, 66 O. S. 49.

A law exempting from taxation a city's gas wells, pipe line, etc., with which it supplies its inhabitants with gas, is valid: *Toledo v. Yeager*, 8 O. C. C. 318, 6 O. C. D. 273.

General Code § 5356, which authorizes the exemption from taxation of a public building, although a part of it is leased, was held to be unconstitutional: *Scott v. Athens*, 1 O. D. (N.P.) 84.

B. School property. In this section the word "public" is used, in some instances, to describe the ownership of property, and in others, as descriptive of the use to which the property is applied; and the term "public schoolhouses" means such schoolhouses as belong to the public, and are designed for schools established and conducted under public authority: *Gerke v. Purcell*, 25 O. S. 229.

C. Public worship. The power to exempt from taxation "houses used exclusively for public worship," implies the power to so exempt such grounds as are reasonably necessary for the use of such houses; but the use must be the same, and therefore a parsonage on grounds adjoining a church, which is used as a residence, can not be exempted from taxation: *Gerke v. Purcell*, 25 O. S. 229.

Parish houses, otherwise known as the residences of the priests and bishops of the Roman catholic church, are not exempt from taxation and legal assessments, by virtue of § 2, Art. XII, of the constitution: *Watterson v. Halliday*, 77 O. S. 150.

Property owned by a church which leases it for a substantial rental to another church to be used exclusively for church purposes, is exempt from taxation under the laws of Ohio: *New Jerusalem Society v. Richardson*, 10 O. N. P. (N.S.) 214.

D. Institutions of purely public charity. Schools established by private donations, and conducted for the benefit of the public, and not with a view to profit, are "institutions of purely public charity," and such school property may be exempted from taxation without reference to the manner in which the title thereto is held, or the form or character of the organization conducting the school: *Gerke v. Purcell*, 25 O. S. 229.

The express authority given in the constitution to exempt from taxation "houses used exclusively for public worship" carries with it, impliedly, authority to exempt such grounds as may be reasonably necessary for their use; but such grounds must subserve the same exclusive use to which the buildings are required to be devoted. The exemption is not of such houses as may be used for the support of public worship, but of houses used exclusively as places of public worship: *Gerke v. Purcell*, 25 O. S. 229.

A corporation created for the sole purpose of affording "an asylum for destitute men and women, and the incurable sick and blind, irrespective of their nationality or creed," is an institution of purely public charity, within the meaning of § 2, Art. XII, of the constitution. Real estate leased to such an institution for a term of years, at a stipulated rent, is not exempt from taxation, although by the terms of the lease the institution may have agreed with the lessor to pay the taxes: *Humphries v. Little Sisters of the Poor*, 29 O. S. 201.

An institution for the education of young men for the gospel ministry, and open to all, is "a purely public charity" within the meaning of § 2, Art. XII, of the constitution of Ohio: *Little v. Seminary*, 72 O. S. 417 [affirming *Seminary v. Little*, 2 O. C. C. (N.S.) 540, 15 O. C. D. 609].

Parish houses, otherwise known as the residences of the priests and bishops of the Roman catholic church, are not exempt from taxation and legal assessments, by virtue of § 2, Art. XII, of the constitution, nor by the provisions of G. C. § 5349, et seq., although such places of residence are used by the priests and bishop for the discharge of many duties of a religious and charitable nature, which are imposed by the vows of their ordination and rules of the church: *Watterson v.*

Halliday, 77 O. S. 150; for opinion below, see Watterson v. Halliday, 2 O. N. P. (N.S.) 693, 15 O. D. (N.P.) 271.

Private property which is appropriated to the support of education for the benefit of the public without any view to profit, is devoted to public charity within the meaning of the constitutional provision: Gerke v. Purcell, 25 O. S. 229; Myers v. Aikens, 8 O. C. C. 228, sub nomine, Meyers v. Akins, 4 O. C. D. 425.

A library association, incorporated under the laws of this state, whose objects and purposes are, "the diffusion of useful knowledge, and the acquirement of the arts and sciences, by the establishment of a library of scientific and miscellaneous books for general circulation, and a reading room, lectures and cabinets; open to all persons, without distinction, upon equal terms, and the income and revenue of which are devoted exclusively to such objects and purposes, is" an institution of purely public charity within the meaning of the sixth clause of act of March 21, 1864: Library Association v. Pelton, 36 O. S. 253.

An exemption from taxation does not exempt from assessment for a local improvement: Lima v. Cemetery Association, 42 O. S. 128.

In a general sense, a tax is an assessment, and an assessment is a tax; but there is a well-recognized distinction between them, an assessment being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity, and levied with reference to special benefits to the property assessed: Lima v. Cemetery Association, 42 O. S. 128.

General Code § 3963, which provides that no charge shall be made by a municipal corporation for water, which is supplied to hospital, asylum or other charitable institution, is a valid and constitutional provision, and authorizes the trustees of the waterworks to furnish water free to an Ohio hospital for epileptics, a part of which is within, and a part of which is without the municipal corporation in question: Gallipolis v. Waterworks, 2 O. N. P. 161, 4 O. D. (N.P.) 101.

E. General exemptions. This section does not render invalid the sixteenth subdivision of G. C. § 5376: Shotwell v. Moore, 45 O. S. 632.

Every citizen is to be taxed upon his property without deduction or exemption, except as provided in § 2, of Art. XII, of the constitution: Ellis v. Linck, 3 O. S. 66.

General Code § 5349, et seq., are within the authority which is conferred upon the general assembly by § 2 of Art. XII, of the constitution. They exempt from taxation an endowment fund of a college which belongs exclusively to it, and which is devoted solely to deriving an income for its support: Little v. Seminary, 72 O. S. 417 [affirming Seminary v. Little, 2 O. C. C. (N.S.) 540, 15 O. C. D. 609].

This section enumerates the subjects of taxation which may, by general laws, be exempted from taxation, viz., "burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value \$200 for each individual." It follows that no subject of taxation not so enumerated can be exempted from taxation, nor can such exemption be made by special act: Bennehoff v. Mansfield, 2 O. N. P. 225, 2 O. D. (N.P.) 404.

Moneys and credits which have been invested in bonds of municipal corporations of this state need not be listed for taxation: Whitely v. Arbogast, 9 O. C. C. (N.S.) 584, 19 O. C. D. 595 [affirming Whitely v. Arbogast, 6 O. N. P. (N.S.) 313, 17 O. D. (N.P.) 569].

Taxes upon business may be imposed or not, in the discretion of the general assembly; but the constitution requires the general assembly to pass laws taxing property, and it is not within the power of the general assembly to exempt or except property from taxation beyond the exemptions provided for in § 2, Art. XII, of the constitution: Assurance Co. v. Halliday, 127 Fed. 830, 14 O. F. D. 305.

Shares of stock in a foreign corporation, a small part of the property of which corporation is subject to taxation in Ohio, are not exempt from taxation, if owned by residents of Ohio: Sturges v. Carter, 114 U. S. 511, 5 O. F. D. 428.

The statutes provided for exempting from an assessment for a public highway, land which had heretofore been assessed for another highway, was held to be unconstitutional by reason of such exemption: Fields v. Commissioners, 36 O. S. 476.

1 Debates, 513; 2 Debates, 35-116, 124-130, 651, 723-742, 754, 755, 789, 793, 818, 819, 826, 828, 830, 831, 839-842, 851, 852, 863, 870.

SECTION 3. The general assembly shall provide, by law, for taxing the notes and bills discounted or purchased, moneys

Same subject.

loaned, and all other property,¹ effects, or dues, of every description, (without deduction,)² of all banks, now existing, or hereafter created, and of all bankers,³ so that all property employed in banking, shall always bear a burden of taxation, equal to that imposed on the property of individuals.⁴

See note to Art. XII, § 2.

I. Cited.
II. Property employed in banking.

III. Without deduction.
IV. Bankers.
V. Burden to be equal.

I. CITED.

State, ex rel., v. Ferris, 53 O. S. 314; State, ex rel., v. Yates, 21 O. C. C. 686, 12 O. C. D. 298 [reversed, State v. Yates, 66 O. S. 546].

II. PROPERTY EMPLOYED IN BANKING.

Moneys deposited with a bank or banker (unless specially deposited) become the moneys of the bank or banker, appertaining to the business of banking, and proper to be listed with the other moneys belonging to that business; and this is equally true of general deposits, whether they happen to be used in the discounting of paper, or held in reserve to pay probable current demands: *Ellis v. Linck*, 3 O. S. 66.

Under the nineteenth section of the tax law of April 13, 1852 (50 v. 135), all the assets and resources of a bank, whether specie or balances in other banks, must, if employed in any manner whereby the bank obtains or reserves a per cent., premium, profit, or a consideration, be averaged for taxation. Specie unemployed, not on hand for sale, and from which the bank derives no profit, etc., is not required to be returned to the assessor. So balances due from other banks, upon which no interest, profit, or consideration is reserved or received, are not required to be returned to the assessor: *Bank v. McGregor*, 6 O. S. 45.

There had been much controversy as to the form of property employed in banking which should constitute a basis of taxation. With a view, therefore, of putting an end to controversy on this subject, and of defining with certainty the form in which property in this branch of business should be made a basis for taxation, this third section was inserted in the constitution: *Bank v. Hines*, 3 O. S. 1.

In the administration of our tax laws, the holder of national bank shares has no right under the statutes, state and national, to deduct the legal bona fide debts from the value of such shares, but he is legally bound to pay tax upon the assessed value of such shares without deduction on account of such debts; property of this sort is "stock" and not "credits": *Chapman v. Bank*, 56 O. S. 310 [following and approving *Niles v. Shaw*, 50 O. S. 370].

However, ingenuously and unsuccessfully the legislature may have by a definition of the constitutional phrase "property employed in banking" attempted to equalize the burdens of taxation upon all classes of banks, yet they can not thereby change the meaning of the constitutional provision, which clearly intended that everything which is regarded by the constitution as property—whether lands, moneys, credits, stocks or bonds—should be taxed wherever found, whether in the hands of a bank or an individual: *Patton v. Bank*, 10 O. D. (N.P.) 321.

The definition of "money" in G. C. § 5326 can not make such term have a different meaning, as applied to the property of banks, from that which it has as applied to the property of individuals: *Patton v. Bank*, 10 O. D. (N.P.) 321.

See Art. XII, § 2, note VI.

III. WITHOUT DEDUCTION.

The tenth section of the law of April 13, 1853, which allowed individuals and certain corporations, in giving their tax lists, to deduct their liabilities from the amount of their moneys and credits, was held to be repugnant to the constitution of Ohio, and void. The constitution permitted no deduction of liabilities from moneys and credits: *Bank v. Hines*, 3 O. S. 1.

Private bankers can not deduct their debts from their moneys and credits: *Ellis v. Linck*, 3 O. S. 66.

"This section was inserted that there might be no doubt how existing as well as future banks and bankers, whether incorporated or unincorporated, were to be taxed; that there might be no doubt what property of theirs was to be the object of taxation; and further, to deprive them of even the two hundred dollar exemption which may

be permitted to individuals under § 2. And hence it is, that we find in it the words 'without deduction': *Bank v. Hines*, 3 O. S. 1.

This section imperatively requires that all property effects and dues of every description, belonging to banks should be taxed: *Bank v. Hines*, 3 O. S. 1.

That part of R. S. § 2759 (repealed 97 v. 280, § 2), regulating returns for taxation of unincorporated banks and bankers, which provided that from the aggregate sum of the first five items therein enumerated, the county auditor shall deduct the aggregate sum of the fifth, sixth, seventh and such portions of the eighth items as are by law exempt from taxation, is not repugnant to either § 2 or § 3, of Art. XII, of the constitution, except to the extent of including the entire third item among those from which the deduction is to be made: *Treasurer v. Bank*, 47 O. S. 503; see, also, *Patton v. Bank*, 7 O. N. P. 401, 10 O. D. (N.P.) 321.

In the administration of our tax laws, the holder of national bank shares has no right under the statutes, state and national, to deduct his legal bona fide debts from the value of such shares, but he is legally bound to pay tax upon the assessed value of such shares without deduction on account of such debts: *Chapman v. Bank*, 56 O. S. 310 [following and approving *Niles v. Shaw*, 50 O. S. 370].

IV. BANKERS.

Persons having money employed in the business described in the fifteenth section of the act of April 13, 1852, are bankers, such as are forbidden to make deductions by the constitution, Art. XII, § 3: *Ellis v. Linck*, 3 O. S. 66.

Under the act of April 12, 1858 (55 v. 128), a partnership engaged in the business of banking, was liable as such to the tax imposed by that act: *Robinson v. Ward*, 13 O. S. 293.

V. BURDEN TO BE EQUAL.

Statutory provisions, whereby different classes of property are listed and valued for taxation in and by different modes and agencies, are not necessarily in conflict with the provisions of this section: *Wagoner v. Loomis*, 37 O. S. 571.

The right granted to a state to tax shares of national banks, can not be exercised by a state unless it imposes upon the moneyed capital in the hands of individual citizens of the state, a tax at least equal in amount upon the same valuation, as is imposed upon national bank shares. The shares of a bank are taxed, and not the property of the bank, except its real estate. The limitations in § 3, Art. XII, prohibit double taxation of the property of banks, bankers and corporations: *Trust Co. v. Lander*, 62 O. S. 266 [affirming *Trust Co. v. Lander*, 19 O. C. C. 271, 10 O. C. D. 452].

If the charter of a bank fixes the rate of taxation therefor in such manner as to amount to a contract, neither subsequent, constitutional nor statutory provisions can authorize the legislature to modify the rate of taxation thus fixed as against the objection of the bank: *Dodge v. Woolsey*, 59 U. S. (18 How.) 331, 3 O. F. D. 300.

1 Debates, 513; 2 Debates, 116-119, 651, 664, 742-744, 755, 789-793, 818, 819, 828-831, 839-842, 851, 863, 870.

SECTION 4. The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt. Revenue.

Keeping in view the difference between state debts and expenses, and the debts and expenses of her subdivisions, it is provided in this section that "The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt: *Cass v. Dillon*, 2 O. S. 607.

By this section the general assembly is imperatively commanded "to provide for the raising of revenue sufficient to defray the expenses of the state for each year." It was, no doubt, intended by this provision, that payment should go hand in hand with expenses: *State v. Medbery*, 7 O. S. 522.

The general assembly is authorized by this section to meet and pay the expense of maintaining the state militia. Furnishing an armory for the state militia, and the maintenance thereof, can not be at the expense of a county: *State, ex rel., v. Brinkman*, 7 O. C. C. 165, 3 O. C. D. 710; see, also, *Hubbard v. Fitzsimmons*, 57 O. S. 436.

1 Debates, 513; 2 Debates, 119, 651, 744, 748, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

Levying of taxes.

SECTION 5. No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

Cited: State, ex rel., v. Harrison, 81 O. S. 98; Jones v. Commissioners, 2 O. C. C. (N.S.) 14, 15 O. C. D. 510; Martindill v. Sanger, 8 O. N. P. 506, 11 O. D. (N.P.) 727; State, ex rel., v. Commissioners, 13 O. D. (N.P.) 97; Commissioners v. Savings Institution, 119 Fed. 36, 55 C. C. A. 614, 15 O. F. D. 33.

The taxing power, which constitutes a branch of the legislative power, and which is of vital importance, and essential to the existence of government, can not be surrendered or abandoned, either in whole or in part, by the legislature, to promote private and individual interests, so as to limit the power and control of future legislation over it; but like the right of eminent domain, and the right of control over existing laws by amendment and repeal, both of which are also vital and essential prerogatives of the legislative power, must continue in unabridged subserviency to the public safety and welfare, the original and paramount purpose of the delegation of all civil power by the people: Bank v. Bond, 1 O. S. 622; see, also, Debolt v. Trust Co., 1 O. S. 563; Bank v. Debolt, 1 O. S. 591; Knoup v. Piqua Bank, 1 O. S. 603; Plank Road Co. v. Husted, 3 O. S. 578; Bank v. Wilbor, 7 O. S. 481; Skelly v. Bank, 9 O. S. 606.

The supreme court of the United States holds such contracts valid: Dodge v. Woolsey, 59 U. S. (18 How.) 331; Bank v. Debolt, 59 U. S. (18 How.) 380; Bank v. Thomas, 59 U. S. (18 How.) 384; Piqua Bank v. Knoop, 57 U. S. (16 How.) 369.

The supreme court of Ohio eventually followed the decisions of the supreme court of the United States: State, ex rel., v. Moore, 5 O. S. 444; Bank v. Lewis, 5 O. S. 447.

The power of taxation being a sovereign power, can only be exercised by the general assembly when, and as conferred, by the constitution; and by municipal corporations only when unequivocally delegated to them by the legislative body: Mays v. Cincinnati, 1 O. S. 268.

Where an act authorized the county commissioners to levy a tax to build a bridge, leaving it to their discretion whether they will exercise the power so given, and they refuse to proceed, and thus abandon the building of the bridge, their act is not in violation of this section and article: State v. Commissioners, 31 O. S. 211.

The act of March 21, 1881, appropriating money to repair the buildings of the Ohio university, is not in conflict with this section: State, ex rel., v. Oglevee, 37 O. S. 1.

It is claimed that G. C. § 177 is void, because it does not state the object for which the tax is imposed, as required by this section of the constitution. It is not necessary that the object should be stated in the very statute imposing the tax. It is sufficient, we apprehend, if the object distinctly appears from the statute read in connection with some other provision found elsewhere in the statutes of the state: Ashley v. Ryan, 49 O. S. 504.

The act of April 15, 1889, requiring "every corporation or company operating a railroad or any part of a railroad within this state" to pay to the commissioner of railroads and telegraphs a fee of one dollar per mile for each mile of track operated by it within this state, contravenes this section: Railway v. State, 49 O. S. 189.

This section does not render invalid a statute (G. C. § 1249, et seq.), which authorizes the state board of health to require a municipal corporation to install a sewage purification system: Board of Health v. Greenville, 86 O. S. 1 [reversing Greenville v. Demorest, 14 O. C. C. (N.S.) 113].

Funds which are raised by a tax for the purpose of improving county roads can not, by a special statute, be applied to the purposes of a municipal corporation in such county: State, ex rel., v. Pohling, 1 O. C. C. 486, 1 O. C. D. 271.

The act of March 24, 1888, entitled "An act to authorize the board of county commissioners of the county of Williams to issue bonds, and to either repair, enlarge and improve the present courthouse or to build a new one, in said county," was held not to be in conflict with this section of the constitution in not stating distinctly its object: State, ex rel., v. Commissioners, 3 O. C. C. 403, 2 O. C. D. 227.

An act providing that any money arising from a tax levy on oil wells in certain counties shall be collected by the treasurer and returned to the township treasurer where the wells are located in any sum not exceeding \$2500 per annum, to be used as a road fund, is invalid: State, ex rel., v. Fangbouer, 14 O. C. C. 104, 7 O. C. D. 334.

It was held in Mitchell v. Commissioners, 5 O. N. P. 158, 5 O. D. (N.P.) 262, that the statute which imposes liability upon a county for injury by mob violence (see G. C. § 6278, et seq.), was unconstitutional.

This case was, however, reversed in *Mitchell v. Commissioners*, 10 O. C. D. 801, which was affirmed in *Commissioners v. Church*, 62 O. S. 318.

General Code § 7739, which provides for free textbooks, does not divert public funds from part of the taxpayers; nor does it discriminate against persons whose children do not attend the public schools: *Mooney v. Bell*, 8 O. N. P. 658, 11 O. D. (N.P.) 786.

A statute which provides for local option for residence districts is not a tax law within the meaning of this article: *Columbus v. Jeffrey*, 2 O. N. P. (N.S.) 85, 14 O. D. (N.P.) 609.

1 Debates, 513; 2 Debates, 119, 124, 651, 748, 754, 755, 789, 793, 818, 819, 831, 839, 842, 851, 863, 870.

SECTION 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement. (As amended September 3, 1912.)

Debt for internal improvement.

Vote: "Yes," 269,039; "No," 248,864.

Original § 6 read as follows: "Sec. 6. [Debt for internal improvement.] The state shall never contract any debt for purposes of internal improvement."

See Art. VIII, § 4.

This restriction applies to the state alone, and not to her subdivisions: *Cass v. Dillon*, 2 O. S. 607.

This section, it is quite evident, was not intended to prohibit the construction of railroads by municipal corporations, nor, indeed, to prohibit any species of public improvements: *Walker v. Cincinnati*, 21 O. S. 14.

1 Debates, 513; 2 Debates, 119-124, 651, 748, 754, 755, 789, 793, 818, 819, 831, 839-842, 851, 863, 870.

SECTION 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation. (Adopted September 3, 1912.)

Taxation of inheritances.

Vote: "Yes," 269,039; "No," 248,864.

SECTION 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation. (Adopted September 3, 1912.)

Taxation of incomes.

Vote: "Yes," 269,039; "No," 248,864.

SECTION 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate. (Adopted September 3, 1912.)

Apportionment of inheritance and income tax.

Vote: "Yes," 269,039; "No," 248,864.

SECTION 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals. (Adopted September 3, 1912.)

Taxation of franchises and production of minerals.

Vote: "Yes," 269,039; "No," 248,864.

Sinking fund.

SECTION 11. No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity. (Adopted September 3, 1912.)

Vote: "Yes," 269,039; "No," 248,864.

ARTICLE XIII.

CORPORATIONS.

Corporate powers.

SECTION 1: The general assembly shall pass no special act conferring corporate powers.

- I. Applied, cited, construed, referred to, etc.**
- II. Municipal corporations.**
- III. Counties and townships.**
- IV. School districts.**
- V. What are corporate powers.**

- VI. Special legislation in force at the adoption of the constitution of 1851.**
- VII. Perpetual franchises.**
- VIII. Local legislation.**

I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

State v. Baughman, 38 O. S. 455; State v. Constantine, 42 O. S. 437; Dearborn v. Bank, 42 O. S. 617; Cincinnati v. Steinkamp, 54 O. S. 284; Purcell v. Riverside, 1 O. C. C. 12, 1 O. C. D. 648; State, ex rel., v. Price, 8 O. C. C. 25, 4 O. C. D. 296; Beamer v. State, 21 O. C. C. 440, 12 O. C. D. 4; Jones v. Commissioners, 2 O. C. C. (N.S.) 14, 15 O. C. D. 510; State v. Toledo, 3 O. C. C. (N.S.) 468, 13 O. C. D. 327; Fagin v. Ohio Humane Society, 6 O. N. P. 357, 9 O. D. (N.P.) 341; State, ex rel., v. Halliday, 7 O. N. P. 47, 9 O. D. (N.P.) 738; Scarborough v. Gibson, 1 O. N. P. (N.S.) 77, 13 O. D. (N.P.) 738; State v. Gibbs, 7 O. N. P. (N.S.) 345, 18 O. D. (N.P.) 681; State, ex rel., v. Wright, 9 O. N. P. (N.S.) 321, 20 O. D. (N.P.) 231; Dodge v. Woolsey, 59 U. S. (18 How.) 331, Fed. Cases, 18032, 6 McLean, 142, 3 O. F. D. 228; Griffin v. Railroad, 3 O. F. D. 441, Fed. Cases, 4581, referred to as showing that a corporation can be created only by legislative authority.

Referred to in dissenting opinion: State v. George, 34 O. S. 657.

II. MUNICIPAL CORPORATIONS.

This section refers to municipal corporations as well as to private corporations: State v. Cincinnati, 20 O. S. 18; State v. Bingham, 14 O. C. C. 245, 7 O. C. D. 522.

The rule that this provision applies to municipal corporations was also recognized in Horstman v. Railway, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670, and Horstman v. Railway, 12 O. D. (N.P.) 756, but this judgment was reversed in Railway v. Horstman, 72 O. S. 93, on the ground that the statute in question did not confer corporate power.

A statute which extends the limits of a specific municipal corporation, by name, and to confer upon such municipal corporation jurisdiction over a number of outlying incorporated suburban villages and other territory not before that time in the limits of that city, is unconstitutional: State v. Cincinnati, 20 O. S. 18.

This section does not prevent a gift in perpetuity from being made by will to a municipal corporation as trustee for educational purposes: Perin v. Carey, 65 U. S. (24 How.) 465, 3 O. F. D. 634.

Under the constitution of 1851, it was at first held by the supreme court that municipal corporations could be so classified that each of the principal cities of the state would be in a separate class and grade so that statutes might be enacted applying to but one city, although such statutes were generally, in their form and purport, to apply to all cities of that class and grade: State, ex rel., v. Covington, 29 O. S. 102; Springer v. Avondale, 35 O. S. 620; State v. Baughman, 38 O. S. 455; Kumler v. Silsbee, 38 O. S. 445; State v. Pugh, 43 O. S. 98; State v. Hudson, 44 O. S. 137; State v. Hawkins, 44 O. S. 98; Marmet v. State, 45 O. S. 63; State, ex rel., v. Toledo, 48 O. S. 112; State, ex rel., v. Baker, 55 O. S. 1; Alter v. Cincinnati, 56 O. S. 47 [modifying Ampt v. Cincinnati, 12 O. C. C. 119, 5 O. C. D. 356]; Railway v. Railway, 50 O. S. 603 [affirming Railway v. Railway, 6 O. C. C. 362, 3 O. C. D. 493]; Shoemaker v. Cincinnati, 68 O. S. 603; Purcell v. Riverside, 1 O. C. C. 12, 1 O. C. D. 648; Seifert v. Weidner, 12 O. C. C. 1, 5 O.

C. D. 506 [affirmed in *Seifert v. Weidner*, 55 O. S. 646]; *Ramsey v. Columbus*, 12 O. D. (N.P.) 725; *Defiance v. Schmidt*, 123 Fed. 1, 59 C. C. A. 159, 14 O. F. D. 408.

The act of April 3, 1885 (82 v. 101), which provided for the appointment of a board of police commissioners in cities of the first grade, of the first class, was held not to be in conflict with this section: *State, ex rel., v. Hudson*, 44 O. S. 137.

The act of April 3, 1885 (82 v. 101), establishing a board of police commissioners in cities of the first grade, of the first class, was held not to be a special act conferring corporate powers: *State, ex rel., v. Hawkins*, 44 O. S. 98.

The provisions of the special act (77 v. 350), which authorized the court of common pleas of Greene county to appoint three police commissioners for the city of Xenia, and vested in them the police powers of the city, was held not in conflict with the constitution: *State v. Baughman*, 38 O. S. 455.

The act of March 25, 1880 (77 v. 83), which provided "that in all municipal corporations which may have heretofore, by ordinance, authorized the use of the streets for certain purposes, such ordinance shall be valid," was held not in conflict with this section: *Kumler v. Silsbee*, 38 O. S. 445.

An act authorizing cities of the first grade, of the first class, to annex contiguous municipalities was held to be valid, even though it is without the consent of the annexed municipalities: *State, ex rel., v. Cincinnati*, 52 O. S. 419.

The law conferring upon cities of the first class, the power to annex whatever adjacent municipal corporations they desire, and the proposition submitted to all the municipal corporations affected, and if approved by an affirmative majority vote would be binding, was held valid: *State, ex rel., v. Cincinnati*, 8 O. C. C. 523, 8 O. C. D. 689.

However, even when such classification was generally upheld, statutes which were so worded that they could apply to but one municipal corporation were frequently held to be unconstitutional: *State, ex rel., v. Mitchell*, 31 O. S. 592; *Tone v. Columbus*, 39 O. S. 281; *State v. Constantine*, 42 O. S. 437; *State, ex rel., v. Anderson*, 44 O. S. 247; *Columbus v. Sohl*, 44 O. S. 479; *Columbus v. Agler*, 44 O. S. 485; *State, ex rel., v. Schwab*, 49 O. S. 229; *Commissioners v. State, ex rel.*, 50 O. S. 653; *Railroad v. Martin*, 53 O. S. 386; *Hixson v. Burson*, 54 O. S. 470; *State, ex rel., v. Cowles*, 64 O. S. 162; *State, ex rel., v. Pohling*, 1 O. C. C. 486, 1 O. C. D. 271 [reversing, without report, *State v. Poling*, 17 Bull. 60, 18 Bull. 18]; *Herrmann v. Cincinnati*, 6 O. C. D. 151 [affirmed, without report, in *Herrmann v. Cincinnati*, 33 Bull. 210; *Herman v. Cincinnati*, 52 O. S. 676]; *Merrill v. Toledo*, 6 O. C. C. 430, 3 O. C. D. 524; *Carr v. West Carrollton*, 8 O. C. C. 1, 4 O. C. D. 303; *Commissioners v. State, ex rel.*, 12 O. C. C. 200, 5 O. C. D. 129; *Keehn v. Wooster*, 13 O. C. C. 270, 7 O. C. D. 456; *Korb v. Mitchell*, 2 O. N. P. 185, 3 O. D. (N.P.) 267; *State, ex rel., v. Bader*, 1 O. N. P. 394, 3 O. D. (N.P.) 99; *State v. Gardner*, 2 O. N. P. 405, 4 O. D. (N.P.) 34; *Shaw v. Jones*, 4 O. N. P. 372, 6 O. D. (N.P.) 453; *Fagin v. Humane Society*, 6 O. N. P. 537, 9 O. D. (N.P.) 341; *Willen v. Cincinnati*, 12 O. D. (N.P.) 54 [affirmed, without report, *Cincinnati v. Willen*, 66 O. S. 633]; *Scarborough v. Gibson*, 13 O. D. (N.P.) 738, 1 O. N. P. (N.S.) 77 [affirmed, without report, *Scarborough v. Gibson*, 69 O. S. 578]; *State v. Wright*, 9 O. N. P. (N.S.) 321; *Investment Co. v. Youngstown*, 68 Fed. 452, 9 O. F. D. 13; *Loeb v. Township*, 91 Fed. 37, 12 O. F. D. 349.

Finally the classification of cities as then in force was held to be in violation of the constitution: *Platt v. Craig*, 66 O. S. 75 [reversing *Walbridge v. Jones*, 22 O. C. C. 682, 11 O. C. D. 496]; *State, ex rel., Knisely v. Jones*, 66 O. S. 453; *State, ex rel., v. Beacom*, 66 O. S. 491; *Railway v. North Bend*, 70 O. S. 46 [affirming *North Bend v. Railway*, 1 O. C. C. (N.S.) 301, 15 O. C. D. 268].

The act of the general assembly (94 O. L. 175) supplementing R. S. § 2835, and which provides, "That any city of the third grade, of the first class may, subject to the provisions herein contained, construct, reconstruct, enlarge or repair a bridge or bridges across any navigable river or rivers, passing into or through such city," etc., was held to be a special act applying only to the city of Toledo. Said act conferred corporate powers and was in conflict with Art. XIII, § 1, of the constitution of Ohio: *Platt v. Craig*, 66 O. S. 75 [reversing, *Walbridge v. Jones*, 22 O. C. C. 682, 11 O. C. D. 496].

All legislative acts relating to the same subject-matter should be construed together; and since all the acts relating to the classification of municipalities and their reclassification and the division of classes into grades, evince the legislative intention that municipalities having substantially the same conditions and characteristics shall not enter and remain in the same class, such acts are ineffectual to designate classified recipients of corporate power, and an act to confer such power upon a single city, by such classification, is repugnant to

Art. XIII, § 1, of the constitution, which ordains that: "The general assembly shall pass no special act conferring corporate powers": State, ex rel., v. Jones, 66 O. S. 453.

A legislative enactment to provide for the organization and support of a police force for a city, the expenses thereof to be paid by a tax levied upon all taxable property within such city, confers corporate powers: State, ex rel., v. Jones, 66 O. S. 453.

The act of April 27, 1902, providing for the reorganization of the board of police commissioners of the city of Toledo, and the appointment of such commissioners by the governor, being a special act conferring corporate powers, is void: State, ex rel., v. Jones, 66 O. S. 453.

The court declined to determine whether any further classification than that suggested in Art. XIII, § 6 (that is, cities and incorporated villages) could be made by the legislature; nor did it determine whether municipal corporations had such constitutional right to local self-government, that the legislature could not authorize the governor to appoint police commissioners: State, ex rel., v. Jones, 66 O. S. 453.

The results of this change of judicial decision have frequently come before the courts for determination.

A municipal corporation which has entered into a contract on the assumption of the validity of a statute, which subsequently appears to be unconstitutional, under the decision of the supreme court as to similar statutes, is estopped from setting up the invalidity of such statute: Mt. Vernon v. State, ex rel., 71 O. S. 428.

Since the supreme court had declared to be valid a statute which provided for the employment of a tax inquisitor, in counties of the state which contain cities of certain grades and classes, the court held that if a contract had been entered into in reliance upon such decision, a service had been rendered thereunder, the party who performed such service was entitled to receive compensation at the contract rate for the service which he had rendered up to the time of the filing of the petition which challenged the validity of such contract, although in the meantime the court had decided that statutes of the same character were unconstitutional: Thomas v. State, 76 O. S. 341.

A county officer who paid into the treasury of the county the fees of his office in excess of the salary appropriated for such office, by an act which was subsequently held to be unconstitutional, being special legislation (the act fixing the compensation of county officers in counties containing a city of the second grade, of the first class), may, after such statute is adjudged to be unconstitutional, receive and retain fees accruing before said adjudication, but not paid until after such adjudication: State, ex rel., v. Vail, 84 O. S. 399.

A statute which authorized cities of the first class to construct a railway was held to be valid in Walker v. Cincinnati, 21 O. S. 14.

Even if the court subsequently believed that such decision was erroneous, it felt bound to uphold supplemental legislation: Cincinnati v. Taft, 63 O. S. 141; Cincinnati v. Ferguson, 12 O. D. (N.P.) 439 [affirmed, without report, Cincinnati v. Ferguson, 47 Bull. 220].

III. COUNTIES AND TOWNSHIPS.

This section does not apply to counties and townships even though they may be said by statute to be bodies corporate and politic. It applies only to municipal corporations and to private corporations: Bank v. Trustees, 13 O. D. (N.P.) 472; Bank v. Trustees, 98 Fed. 524, 13 O. F. D. 318; Rees v. Olmstead, 135 Fed. 296, 68 C. C. A. 50, 14 O. F. D. 737.

For compensation under an unconstitutional county officers' act, see State, ex rel., v. Vail, 84 O. S. 399.

IV. SCHOOL DISTRICTS.

This section does not apply to school districts or to boards of education; since they are not corporations within the meaning of this section, even though a statute on the subject may term them bodies corporate and politic: State v. Powers, 38 O. S. 54; State, ex rel., v. Board of Education, 7 O. C. C. 152, 3 O. C. D. 703; see, also, State, ex rel., v. Halliday, 7 O. N. P. 47, sub nomine, State, ex rel., v. Holliday, 9 O. D. (N.P.) 738.

In Eckstein v. Board of Education, 10 O. C. C. 480, 4 O. C. D. 149, it was said, however, that a statute which authorized a school district by name to issue bonds was in violation of this section.

Many of these statutes applicable to special cities, counties, townships and school districts are in violation of Art. II, § 26, requiring laws of a general nature to have uniform operation throughout the state

V. WHAT ARE CORPORATE POWERS.

An ordinance granting permission to a street railroad company to extend its track, is not an act conferring corporate powers. It is merely a permit to the corporation to exercise the corporate powers conferred by general law: *Sims v. Railroad*, 37 O. S. 556.

Where a municipal corporation, in exercising the power of assessment to pay for a public improvement, levies an assessment upon property which was not subject to be charged therewith, and, in a suit brought to enforce the assessment the property thus charged was ordered to be sold to pay the same, it is competent for the legislature to relieve the property thus ordered to be sold, and to require the amount improperly charged thereon to be paid out of the funds of the corporation. Where the statute granting such relief does not confer corporate power, it may by a special act, in which the municipal corporations are named: *State, ex rel., v. Hoffman*, 35 O. S. 435.

The legislature may authorize by special act the abandonment of a canal by the state and the disposition of it to an existing railway company: *Vought v. Railroad*, 58 O. S. 123.

The special act of March 20, 1867 (64 O. L. 285), in so far as it authorized the Pennsylvania and Ohio Canal Company, upon certain conditions, to abandon a portion of its canal, is a permission to surrender corporate power, not an attempt by special legislation to confer corporate power, and is, therefore, not in conflict with this section: *Canal Co. v. Commissioners*, 27 O. S. 14.

A statute which created a board of trustees of the Cincinnati hospital and gave certain powers to such board was held not to be in violation of this section, since such board was not a corporation: *State, ex rel., v. Davies*, 23 O. S. 434.

A statute which specifically grants to the council of the city of Cincinnati the power to approve or reject the regulations of the trustees of the Cincinnati hospital, confers corporate power upon the city of Cincinnati and violates this provision of the constitution: *State v. Cincinnati*, 23 O. S. 445.

The power to issue bonds to raise funds for the repair and extension of a hospital belonging to a city, and to levy a tax upon all the taxable property within such city, for their payment, is corporate power. The conferring of such power by special act is inhibited by this section; and to the effectiveness of the inhibition it is immaterial whether the act designates as the donee of such power the municipality itself, or an agency through which it ordinarily acts, or such extraordinary agency as a board of trustees. The comprehensive terms of this section do not admit of any exception on account of any supposed or real emergency: *Cincinnati v. Hospital Trustees*, 66 O. S. 440.

The board of trustees of the Toledo university is not a corporation, and a law conferring powers upon such board is not invalid, by reason of this section: *State, ex rel., v. Toledo*, 3 O. C. C. (N.S.) 468, 13 O. C. D. 327.

Since the legislature can not create a corporation by a special statute, a statute which creates a board of trustees of the Ohio state university will be regarded as creating a branch of the state government, and not as creating a corporation: *Thomas v. Trustees*, 195 U. S. 207, 14 O. F. D. 433; *Neil v. Trustees*, 31 O. S. 15.

A statute which authorizes a municipal corporation of a certain grade and class to build a system of waterworks was once held not in violation of this section: *Ampt v. Cincinnati*, 56 O. S. 47 [modifying *Ampt v. Cincinnati*, 12 O. C. C. 119, 5 O. C. D. 356].

This section does not render invalid a general statute which excludes building and loan associations from the operation of the usury laws: *Building & Loan Association v. Desnoyers*, 4 O. C. C. (N.S.) 337, 16 O. C. D. 352; see, also, *Cramer v. Loan & Trust Co.*, 72 O. S. 395.

The charter of the Marietta and Cincinnati Railroad Co., did not authorize it to mortgage or sell its corporate franchise to be a corporation; and a judicial sale upon mortgages executed by it, would not invest the purchasers with any corporate capacity whatever. A "special act" of the general assembly undertaking to give such an effect to the sale, and authorizing the purchasers to reorganize, create a new stock, and elect another board of directors, is, in substance and legal effect, an attempt to create a corporation and confer corporate powers by a special act; and is in conflict with the first and second sections of Art. XIII, of the constitution of the state: *Atkinson v. Railway*, 15 O. S. 21.

VI. SPECIAL LEGISLATION IN FORCE AT THE ADOPTION OF THE CONSTITUTION OF 1851.

This section forbids future legislation. It did not render invalid special legislation which was in force when the constitution of 1851

Art. XIII, § 2. CONSTITUTION OF THE STATE OF OHIO OF 1851.

was adopted: *Bank v. Wright*, 6 O. S. 318; *State, ex rel., v. Roosa*, 11 O. S. 16; *State, ex rel., v. Trustees*, 8 O. S. 394.

A special act passed prior to the adoption of the constitution of 1851, authorized commissioners therein named to open books, receive subscriptions to capital stock, and thereupon to organize a corporation under it, was not abrogated or repealed by Art. XIII, § 2, of the constitution of 1851, nor by the act "to create and regulate railroad companies," passed May 1, 1852; *State, ex rel., v. Roosa*, 11 O. S. 16; see, also, *State v. Laning*, 7 O. N. P. (N.S.) 345, 18 O. D. (N.P.) 681.

The act of the general assembly "authorizing county commissioners to grant further time for the completion of free turnpike roads, and paying for the same," passed May 1, 1854, is not repugnant to the present constitution: *Foster v. Commissioners*, 9 O. S. 540.

If a railroad corporation which was created prior to the constitution of 1851, takes advantage of the general statutes on the subject of consolidation, it becomes subject to legislative control and the statute may subsequently regulate the rates to be charged by such railway: *Shields v. State*, 95 U. S. 319, 4 O. F. D. 471.

VII. PERPETUAL FRANCHISES.

By virtue of this section and the following section, the legislature may revoke street railway franchises, which were granted at a time when no limitation was imposed upon their duration: *State, ex rel., v. Railway*, 1 O. C. C. (N.S.) 145, 14 O. C. D. 609 [affirmed, without report, *State, ex rel., v. Railway*, 73 O. S. 363]; see, also, *Railway v. Cleveland*, 137 Fed. 111, 14 O. F. D. 513.

The right to lay gas pipes in the public streets will be presumed not to be exclusive; but if it were, it could be revoked by this section of Art. XIII, § 2, and by Art. I, § 2: *Coke Co. v. Hamilton*, 146 U. S. 258, 7 O. F. D. 358.

VIII. LOCAL LEGISLATION.

It was not the design of the framers of the constitution or of the people in adopting it, to withhold the power to provide such local or special laws as the public necessities might require: *McGill v. State*, 34 O. S. 228.

A temporary act may be either general or special; and an act of a general nature which operates uniformly throughout the state and upon every individual corporation of the classes therein defined, but which is by its terms limited in operation to a specified period of time, is a temporary general statute: *Railway v. Horstman*, 72 O. S. 93 [reversing *Horstman v. Railway*, 1 O. N. P. (N.S.) 25, 13 O. D. (N.P.) 670; *Horstman v. Railway*, 12 O. D. (N.P.) 756, and *Horstman v. Railway*, 14 O. D. (N.P.) 545].

In *Rees v. Olmsted*, 135 Fed. 296, 68 C. C. A. 50, 14 O. F. D. 737, it was held that this section did not render invalid a statute which provided that counties of a certain population might construct a road improvement and levy an extra tax therefor, on petition of a majority of the landowners, even if such statute applied only to one county in the state.

A special law that detaches part of a municipality and attaches to an adjoining township, is valid: *Metcalf v. State, ex rel.*, 49 O. S. 586.

1 Debates, 260, 340-363, 447, 458; 2 Debates, 644-650, 654-659, 667, 675, 851, 863, 870.

Corporations,
how formed.

SECTION 2. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissioners or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities, and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual. (As amended September 3, 1912.)

Vote: "Yes," 300,466; "No," 212,704.

Original § 2 read as follows: "Sec. 2. [Corporations, how formed.] Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed."

- I. Cited.**
II. What are corporations.
III. Prospective character of this section.

- IV. Formation of corporations by special act.**
V. Repeal and alteration.

I. CITED.

Railway v. Sharpe, 38 O. S. 150; Hubbard v. Brush, 61 O. S. 252; Railway v. Railway, 6 O. C. C. 362, 3 O. C. D. 493 [affirmed in Railway v. Railway, 50 O. S. 603]; Railway v. State, ex rel., 8 O. C. C. 220, 4 O. C. D. 406 [affirmed, without report, Railway v. State, ex rel., 56 O. S. 736, 1 O. S. U. 581, and 37 Bull. 193]; Seifert v. Weidner, 12 O. C. C. 1, 5 O. C. D. 506; see, for opinion of supreme court, State, ex rel., v. Baker, 55 O. S. 1; Railway v. Cleveland, 137 Fed. 111, 14 O. F. D. 513.

Cited by mistake for Art. XII, § 2: Insurance Co. v. Bowland, 196 U. S. 611, 2 O. L. R. 515.

II. WHAT ARE CORPORATIONS.

This section is said to make no distinction between public and private corporations: State, ex rel., v. Cincinnati, 20 O. S. 18.

A county is a necessary political organization: Boalt v. Commissioners, 18 O. 13.

It is not, however, a corporation, but merely an organization for administrative purposes which is invested with a few of the functions of a corporation: Railway v. Commissioners, 1 O. S. 77; Commissioners v. Mighels, 7 O. S. 109; Hunter v. Commissioners, 10 O. S. 515; State, ex rel., v. Cincinnati, 20 O. S. 18.

III. PROSPECTIVE CHARACTER OF THIS SECTION.

This section is said to be prospective and not restropective in its effect: Bank v. Wright, 6 O. S. 318; State v. Trustees, 8 O. S. 394; State v. Roosa, 11 O. S. 16; see, also, Railway v. Commissioners, 1 O. S. 77; State, ex rel., v. Van Horne, 7 O. S. 327; see, also, Commissioners v. Nichols, 14 O. S. 260.

Neither this section nor Art. VIII, § 6, repeals by implication, prior special statutes which gave to public corporations and quasi corporations, the power to subscribe stock and to issue bonds in aid of railways: Cass v. Dillon, 2 O. S. 607; State, ex rel., v. Perrysburg, 14 O. S. 472.

This section refers necessarily to charters which are granted after this section took effect: Gas Light Co. v. Cleveland, 71 Fed. 610, 9 O. F. D. 258.

A special charter containing terms which amount to a contract can not be repealed by the constitution of 1851 or by legislation thereunder, if power to repeal was not reserved in the charter of the corporation: Cleveland v. Railway, 93 Fed. 113, 12 O. F. D. 459.

It will not be presumed that a corporation created before the constitution of 1851 is exempt from legislative control: Zanesville v. Gas Light Co., 1 O. C. C. 123, 1 O. C. D. 73.

IV. FORMATION OF CORPORATIONS BY SPECIAL ACT.

This section prevents the formation of a corporation, whether public or private, by special statute: Atkinson v. Railway, 15 O. S. 21; State v. Sherman, 22 O. S. 411; Hixson v. Burson, 54 O. S. 470.

V. REPEAL AND ALTERATION.

Railroad corporations formed under the general laws enacted since this section took effect, possess under such statutes no privileges of which the legislature may not deprive them: State v. Sherman, 22 O. S. 411; Shields v. State, 26 O. S. 86; Railway v. Railway, 30 O. S. 604; State, ex rel., v. Hamilton, 47 O. S. 52; Railway v. Telegraph Association, 48 O. S. 390.

Consolidated railroad companies organized in pursuance of the act of 1856 (53 v. 143), are corporations formed under a general law, within the meaning of this section, and as such are subject to the limitations and reservations contained therein, and in § 2, Art. I; and the general assembly may alter and regulate rates of fare chargeable by such companies: Shields v. State, 26 O. S. 86 [affirmed, Shields v. State, 95 U. S. (5 Otto) 319, 4 O. F. D. 471].

The legislature may change the provisions with reference to the construction of fences by railway companies: Railroad v. Schultz, 43 O. S. 270.

Art. XIII, § 3. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Even if a grant to a gas light company is exclusive, the rights thus given may by virtue of this section be taken away subsequently: *Coke Co. v. Hamilton*, 7 O. F. D. 358, 146 U. S. 258.

A corporation formed under this section may, after its formation, be authorized to consolidate with other corporations: *Dunham v. Kauffman*, 10 O. N. P. (N.S.) 49, 20 O. D. (N.P.) 274.

By virtue of this section, G. C. § 9010, which forbids railways to maintain certain kinds of relief associations, is constitutional: *State, ex rel., v. Pennsylvania Co. and Railway Co.*, 13 O. C. C. (N.S.) 37.

1 Debates, 260, 363-369, 458; 2 Debates, 644, 659-662, 675, 676, 851, 863, 870.

Dues from corporations; how secured.
Double liability of state banks and inspection of private banks.

SECTION 3. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her; except that stockholders of corporations authorized to receive money on deposit shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such corporations, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word "bank," "banker" or "banking," or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state. (As amended September 3, 1912.)

Vote: "Yes," 377,272; "No," 156,688.

Section 3, as amended November 3, 1903: 95 v. 961, read as follows: "Sec. 3. [Dues from corporations; how secured.] Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her. [As amended November 3, 1903: 95 v. 961.]"

The vote adopting this amendment was "Yes," 751,783; "No," 29,383.

Original § 3 read as follows: "Sec. 3. [Dues from corporations how secured.] Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock."

I. Applied, cited, etc.
II. Original section.
A. Scope and effect.

B. Who were liable.
C. Nature of liability.
III. Amendment of 1903.

I. APPLIED, CITED, ETC.

The history of this section and of the legislation which has been enacted thereunder is found in *Brown v. Hitchcock*, 36 O. S. 667.

Referred to erroneously as Art. II, § 3: *Swan v. Railway*, 3 O. N. P. 225, 6 O. D. (N.P.) 162.

II. ORIGINAL SECTION.

A. Scope and effect. Under the original form of this section the legislature had no power to create a corporation without imposing a stock liability upon its stockholders: *State, ex rel., v. Sherman*, 22 O. S. 411.

The power of the general assembly under this section to provide means for securing the creditors of corporations, is not exhausted by the imposition of a personal liability on each stockholder over and above the stock owned by him, and any amount unpaid thereon, to a further sum equal to the amount of his stock. Express authority is conferred to provide other means of security: *Hessler v. Punch & Shear Works*, 61 O. S. 621.

The original section was not regarded as self-executing. It rendered invalid statutes which provided for the organization of corporations without imposing an individuality upon the stockholders; but it did not impose such liability without such legislation: *Bank v. Railway*, 197 U. S. 394; *State, ex rel., v. Sherman*, 22 O. S. 411; see on this question, *Little v. Aultman*, 15 O. D. (N.P.) 355.

Under this section a statute which authorizes the formation of a corporation but made no provision for the liability of its stockholders, was unconstitutional: *State, ex rel., v. Sherman*, 22 O. S. 411.

This section was remedial in character and was to be extended to all who fairly come within its terms: *Rider v. Fritchey*, 49 O. S. 285.

This section in its original form was prospective and not retrospective: *Bank v. Wright*, 6 O. S. 318.

B. Who were liable. A pledgee of shares of stock not transferred to him on the books of the company, was not a stockholder within the meaning of this section: *Henkle v. Manufacturing Co.*, 39 O. S. 547.

Where partners create a corporation to continue business, and capitalize the partnership property at an inflated value, the capital stock of the corporation amounting to such inflated value, and issue the shares of stock to the partners as paid-up, each partner receiving in proportion to his interest in the partnership, this is a fraud upon the corporation's creditors, regardless of the stockholders' intentions, and after deducting the true value of the partnership property transferred, the balance is a debt due to the corporation: *Gates v. Stone Co.*, 57 O. S. 60.

A trustee in whose name stock stood on the stock books of a corporation, was held to be personally liable as a stockholder: *Schwill v. Beckel*, 1 O. N. P. (N.S.) 1, 104, 13 O. D. (N.P.) 699.

A corporation can not buy its own stock: *Coppin v. Greenlees & Ransom Co.*, 38 O. S. 275.

The trustees of a mutual insurance company, by the regulations of which losses were to be paid by assessments, are not liable personally for losses upon policies issued by the company while they were in office: *Kelley v. Bender*, 22 O. C. C. 144, 12 O. C. D. 181.

C. Nature of liability. The statutory liability of the stockholders was not a primary resource or fund for the payment of the debts of the corporation; but was collateral and conditional to the principal obligation which rested on the corporation, and was to be resorted to by the creditors only in case of the insolvency of the corporation, or where payment could not be enforced against it by ordinary process. Where an action was instituted by part of the creditors of an insolvent corporation against the stockholders, to enforce such liability for the benefit of all the creditors, no creditor could acquire priority, or institute a separate suit for the enforcement of such liability in his own behalf: *Wright v. McCormack*, 17 O. S. 87.

That such liability is collateral, see, also, *Swan v. Railway*, 3 O. N. P. 225, 5 O. D. (N.P.) 297, 6 O. D. (N.P.) 162.

A holder of stock in an Ohio corporation, who transfers his stock after a corporate debt has been created, is not relieved from his statutory liability for such debt, by an agreement for an extension of the time for its payment; although such agreement be made by the corporation and creditor after such transfer, and without the knowledge or consent of the transferor: *Boice v. Hodge*, 51 O. S. 236.

The stockholders of a corporation whose names appear on the stock book, or in the absence of such book, on stubs of stock certificates, as holders of stock, are subject to a stockholder's liability for debts incurred by the corporation while such names are allowed to so remain. To avoid such liability, it must appear on the stock book in the one case, or on the stub of the stock certificate in the other, that the stock has been transferred to some one else: *Herrick v. Wardwell*, 58 O. S. 294.

A statute which modifies the liability of stockholders is unconstitutional as applicable to liabilities which were incurred prior to the enactment of such statute: *Swift & Co. v. Baking Co.*, 6 O. C. C. (N.S.) 89, 17 O. C. D. 253; *Little v. Aultman*, 15 O. D. (N.P.) 355.

A provision in a bond issued by a corporation whereby it was agreed that the stockholders should not be held liable upon such obligation, was said to be valid in *Hull v. Coal & Iron Co.*, 20 O. C. C. 533, 11 O. C. D. 331.

Contra: See *Kreisser v. Light Co.*, 2 O. C. C. (N.S.) 597, 14 O. C. D. 313.

For a discussion of the liability of stockholders under the former constitutional provision and the statutes enacted thereunder, see G. C. § 8686 and note thereto.

III. AMENDMENT OF 1903.

The amendment of 1903 was self-executing as to debts incurred after the date of its adoption; and as to such debts it repealed former

statutes: *Sheets Manufacturing Co. v. Neer Manufacturing Co.*, 4 O. N. P. (N.S.) 201, 17 O. D. (N.P.) 119.

1 Debates, 260, 369-385, 387-430, 433-443, 458; 2 Debates, 644, 667, 668, 676, 851, 863, 870.

Corporate prop-
erty subject to
taxation,

SECTION 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

Cited and referred to: *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Sanford v. Poe*, 69 Fed. 546, 16 C. C. A. 305, 9 O. F. D. 50; *Telegraph Co. v. Poe*, 69 Fed. 557, 16 C. C. A. 683, 9 O. F. D. 63.

There was no absolute necessity for this section, for without it § 2, Art. XII, would have embraced existing and future corporations. This section, however, was inserted out of abundant caution, that there might be no doubt either as to existing or future corporations, what would be the rule of taxation: *Treasurer v. Bank*, 47 O. S. 503; see, also, *Bank v. Hines*, 3 O. S. 1.

A corporate franchise, being a mere privilege or grant of authority by the government, is not property of any description, and consequently not subject to taxation: *Bank v. Hines*, 3 O. S. 1; *Baker v. Cincinnati*, 11 O. S. 534.

The act of March 21, 1851, to regulate free banking, was held to be not inconsistent with any of the provisions of the existing constitution, and is not repealed by it: *Bank v. Wright*, 6 O. S. 318.

The limitations in § 3, of Art. XII, and this section, of the constitution prohibit double taxation of the property of banks, bankers and corporations: *Trust Co. v. Lander*, 62 O. S. 266 [affirming *Trust Co. v. Lander*, 19 O. C. C. 271, 10 O. C. D. 452]; *Creech v. Railway*, 2 O. N. P. 164, 3 O. D. (N.P.) 265; *Hynicka v. Insurance Co.*, 4 O. N. P. (N.S.) 297, 17 O. D. (N.P.) 80 [affirmed in *Insurance Co. v. Hynicka*, 5 O. N. P. (N.S.) 255, 18 O. D. (N.P.) 1].

The limitation in this section of the constitution, which prohibits double taxation of the property of corporations, applies only to taxation on property, and not to taxation of privileges or franchises. What is said in *Trust Co. v. Lander*, 62 O. S. 266, as to that limitation, is solely as to property taxation. That section of the constitution plainly shows that it applies to property taxation only, and has no reference to excise or franchise taxes: *Gum Co. v. Laylin*, 66 O. S. 578.

The legislature may provide for the taxation of the property of a corporation; also for the taxation of its shares of stock: *Bank v. Miller*, 19 Fed. 372, 5 O. F. D. 247.

1 Debates, 260, 444, 458; 2 Debates, 659, 664-667, 676, 851, 863, 870.

Right of way.

SECTION 5. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

See Art. I. § 19, note.

See Art. XIII, § 2, notes.

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| I. Cited. | V. Deduction of benefits. |
| II. Appropriation of right of way. | VI. Compensation ascertained by jury. |
| III. Corporation. | VII. Mode of compensation prescribed by law. |
| IV. Compensation. | |

I. CITED.

Lamb v. Lane, 4 O. S. 167; *Railway v. Bolen*, 76 O. S. 376; *Freeman v. Hunter*, 7 O. C. C. 117, 3 O. C. D. 689 [affirmed, without report, *Hunter v. Freeman*, 51 O. S. 574]; *Toledo v. Bayer*, 7 O. N. P. 324, 5 O. D. (N.P.) 87; *Mitchell Furniture Company v. Railway*, 7 O. N. P. 640, 9 O. D. (N.P.) 674.

II. APPROPRIATION OF RIGHT OF WAY.

Where the charter of a railroad company merely fixes a few points through which the road is to pass, from its commencement to its terminus, leaving the location of the road between the points specified to the discretion of the corporation, the railroad company having once located the road, their power to relocate, and for that purpose to appropriate the property of an individual, has ceased: *Railroad v. Naylor*, 2 O. S. 235.

The same principle applies, whether the case be that of an attempt to relocate on the property of an individual, or that of using a street or highway for the purpose: *Railroad v. Naylor*, 2 O. S. 235.

The general assembly possesses the constitutional power to confer upon a corporation authorized to construct a railroad, the right to appropriate grounds necessary for its use for a depot: *Giesy v. Railroad*, 4 O. S. 308.

Where an incorporated company has, by its charter, authority to construct a road between given points, and to appropriate land to the width of sixty feet over which to locate the same, and, when finished, to charge and collect tolls from travelers who pass over it. It was held that after the company has made such an appropriation of land for the purpose of its road, and freeholders have, in accordance with the provisions of the charter, ascertained and determined the owner's damage, it may, within the sixty feet of ground used for the road, build a toll-house and dig a well for the accommodations of the toll-gatherers: *Ward v. Bridge Co.*, 6 O. S. 15.

"Any other structure, within the sixty feet, and essential to the carrying out the object sought by the incorporators, and consonant with their charter, may, as an unavoidable and legitimate incident of the powers given them, be placed within the road limits": *Ward v. Bridge Co.*, 6 O. S. 15.

Grants of corporate power, being in derogation of common right, are to be strictly construed—particularly where the power claimed is a delegation of the sovereign power of eminent domain. Hence, where a railroad company is authorized by law only "to enter upon any land to survey, lay down and construct its road," "to locate and construct branched roads from the main road to any town or places in the several counties through which the said road may pass," to appropriate land for "necessary sidetracks," and "a right of way over adjacent lands sufficient to enable such company to construct and repair its road;" and such company has located, and is engaged in the construction of its permanent main road along the north side of a town, it is not authorized to appropriate a temporary right of way, for the term of three years, along the south side of the town, to be used as a substitute for the main track while the same is in course of construction along the north side of the town: *Currier v. Railroad*, 11 O. S. 228.

Authority to lay down the necessary structure for a street railway, in a common highway or street, and to run cars thereon for the carriage of passengers for hire, may be lawfully granted to a company incorporated for that purpose, when no private right of the adjoining lotowners is thereby impaired: *Railway v. Cumminsville*, 14 O. S. 523.

A railroad company authorized to change the location of its track, on account of difficulty of construction and other causes, may do so at any time before the construction of its road is completed at the point where the change is made: *Atkinson v. Railroad*, 15 O. S. 21.

Having once located and constructed its road, the company can not relocate it, and for that purpose appropriate private property: *Moorhead v. Railroad*, 17 O. 340; *Atkinson v. Railroad*, 15 O. S. 21.

Under the general corporation act of 1852 (50 v. 274, §§ 21, 27, 28) (see G. C. § 8759), a railroad company has power to condemn land for new sidetracks, leading from the main road to its depot buildings, whenever they become necessary in the proper management and operation of the road: *Railway v. Daniels*, 16 O. S. 390.

A railroad company organized under and made subject to the provisions of the "act regulating railroad companies," of February 11, 1848 (46 v. 40), is not authorized to condemn private property to its exclusive use solely for the purposes of a wharf: *Railroad v. Iron-ton*, 19 O. S. 299.

The power given to municipal corporations to condemn private property for a public wharf is an express power; and the right of a railroad company to hold property exempt from the exercise of this power can not be extended, by construction, to lands held by the company for uses and purposes for which it is not, by law, authorized to condemn private property: *Railroad v. Iron-ton*, 19 O. S. 299.

Mere silence on the part of the landowner as to the laying of an interurban railway track in the highway passing through his land is not consent to the subsequent laying of a switch in said highway: *Chambers v. Traction Co.*, 5 O. C. C. (N.S.) 298, 17 O. C. D. 193 [affirmed, without report, *Traction Co. v. Chambers*, 73 O. S. 348].

An additional burden is imposed upon the landowner by the laying of such a switch, and where this is done without compensation being made therefor, or consent first obtained, a constitutional right of the landowner is violated and an injunction will lie upon his petition: *Chambers v. Traction Co.*, 5 O. C. C. (N.S.) 298, 17 O. C. D. 193 [affirmed, without report, *Traction Co. v. Chambers*, 73 O. S. 348].

General Code § 10128, et seq., which authorizes the appropriation of real property for dams, pipe lines and the like, is valid and constitutional and does not authorize the appropriation of property for any purpose for which the power of eminent domain may not be conferred: *Heat & Power Co. v. White*, 5 O. N. P. (N.S.) 201, 52 Bull. 354 [affirmed, without report, *Heat & Power Co. v. White*, 77 O. S. 633].

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That whatever interest the plaintiff has in the streets in front of its property as appendant to its abutting lots, is as much property as the abutting lots. That it necessarily follows that such interest, if any it has, is within the protection of the constitution, and can not be taken by a railway company as right of way for its railroad, except upon full compensation being first made, such compensation (in the absence of consent) to be determined by a jury, irrespective of any benefits resulting to the property by reason of the building of the road: *Bending Co. v. Railway Co.*, 2 O. N. P. 317, 3 O. D. (N.P.) 430.

The construction and maintenance of a telegraph or telephone line upon a highway is a new and additional burden upon the fee, to which, when the highway was established, it was not contemplated it would be subjected, and for which the owner is entitled to additional compensation: *Denver v. Telephone Co.*, 10 O. D. (N.P.) 273; see, to the same effect, *Telephone Co. v. Cush*, 14 O. D. (N.P.) 148.

III. CORPORATION.

This section does not apply to property taken for roads open to the public without charge: *Toledo v. Preston*, 50 O. S. 361; see, also, *Fogarty v. Cincinnati*, 7 O. N. P. 100, 9 O. D. (N.P.) 753.

This section does not apply to cases of property taken to construct public roads or streets in towns or cities: *Quinby v. Cleveland*, 16 O. F. D. 583.

So far as the restrictions imposed upon the right of eminent domain by the constitution are concerned, the compensation to be made for land taken for street purposes need not first be made: *Garvin v. Columbus*, 5 O. N. P. 236, 5 O. D. (N.P.) 333.

Corporate existence and the right to exercise the power of eminent domain can only be derived from legislative enactment; and before a company can demand a judgment of condemnation, it must show that both have been conferred upon it by a valid law, and that it has substantially complied with the conditions which the law has annexed to the exercise of the power: *Atkinson v. Railroad*, 15 O. S. 21; *Railroad v. Sullivant*, 5 O. S. 276.

In the absence of specific statutory authority which is itself general in character and not special legislation, the sale of the property of a corporation does not carry with it the franchises of a corporation or the right of eminent domain: *Coe v. Railroad*, 10 O. S. 372; *Atkinson v. Railroad*, 15 O. S. 21.

IV. COMPENSATION.

Where a piece or strip of land is, by appropriation made by a railroad company, severed from its connection with the other land of the owner, in estimating the compensation to be made to the owner, not only is the abstract value of the strip or piece taken to be considered, but also its relative value, and the effect arising from its severance from the residue of the owner's land, as well as the uses to which it is to be appropriated: *Railroad v. Ball*, 5 O. S. 568.

Where a right of way originally appropriated for one public use is afterward taken for another, the owner of the fee simple title to the lands is entitled to recover a full and fair compensation for such additional burdens and inconveniences, not common to the general public, as accrue to him and his entire tract on which the easement is imposed, by reason of the change of uses to which the lands appropriated have been subjected: *Hatch v. Railroad*, 18 O. S. 92.

Where an entire tract of land is cut asunder by an appropriation of an easement upon it by a canal company, for the purpose of a canal, and this easement is afterward transferred by the canal company to a railroad company, for the purpose of a railroad, and the latter, in the construction of its railroad, throws up embankments or excavates cuts across a common public highway, skirting the tract, and constituting the only convenient medium of access between the parcels into which the tract has been thus severed, the increased inconvenience and danger of access thus occasioned between the two parts of the tract are peculiar to the owner of the tract in the use of his property, not common to the public at large, and for this increase of inconvenience and danger, he is entitled to compensation: *Hatch v. Railroad*, 18 O. S. 92.

The rightful power of a canal company over the canal, in the absence of any statute or contract to limit it, being exclusive, any use of the waters of the canal for purposes of navigation, or for watering stock, by the owner of the fee simple of the lands intersected by it, being a matter of sufferance and not of right, the loss of these conveniences, by reason of the change of use above mentioned, do not constitute an element to be reckoned in estimating the amount of his compensation: *Hatch v. Railroad*, 18 O. S. 92.

Nor is such owner entitled, in such action, to recover on account of increased danger from fire to his buildings or other structures, by

reason of the change of use aforesaid, unless the proximity of his buildings, etc., to the railroad be such as to render the danger imminent and appreciable: *Hatch v. Railroad*, 18 O. S. 92.

In a proceeding under G. C. § 11084, et seq., by an owner of land, wrongfully occupied by a railroad company, to compel the company to appropriate and pay for the same, the measure of compensation is the value of the land at the time it is assessed in the proceeding: *Railroad v. Perkins*, 49 O. S. 326.

In proceedings by a municipal corporation to appropriate private property for a street, a mortgagee whose mortgage is duly recorded is an "owner" within the meaning of that act, and entitled to notice of the pendency of such proceedings (see G. C. § 3682): *Harrison v. Sabina*, 1 O. C. C. 49, 1 O. C. D. 30.

In condemnation proceedings brought by a traction company seeking to appropriate a right of way through a farm, the owner must be paid for the land taken its fair market value at the time it is taken, and testimony tending to introduce the element of probable benefit to the farm from the building of the road, or as to the price at which the farm may have been offered for sale, is incompetent: *Traction Co. v. Dempsey*, 9 O. N. P. (N.S.) 65.

V. DEDUCTION OF BENEFITS.

The provisions of Art. I, § 19, and Art. XIII, § 5, of the constitution, the one requiring compensation to be made without deduction for benefits, when property is appropriated to a public use, and the other providing for compensation, irrespective of benefits, where it is taken by a corporation for a right of way, are, in legal effect, identical. When taken under either section, its fair market value in cash, at the time it is taken, must be paid to the owner; and the jury, in assessing the amount, has no right to consider or make any use of the fact that it has been increased in value by the proposal or construction of the improvement: *Giesy v. Railway*, 4 O. S. 308.

If compensation is claimed for the location and construction of a railroad between coal mines and a navigable river on the landowner's premises, whereby the conveniences of the river transportation for the coal to market were injured, or cut off, it is competent for the railroad company to show that the river transportation, in connection with the coal banks, had ceased to be valuable, or become of less value by means of the facilities for coal transportation afforded by the railroad, for the purpose of reducing the damages: *Railroad v. Ball*, 5 O. S. 568.

In case of a railroad appropriation for a right of way through a tract of land causing incidental and local injury to the residue of the tract, although general resulting benefits from the railroad to the value of such residue of the land can not be taken into account in estimating the amount of compensation to be paid to the owner, yet where a local incidental benefit to the residue of the land is blended or connected, either in locality or subject-matter, with a local incidental injury to such residue of the land, the benefit may be considered in fixing the compensation to be paid the owner, not by way of deduction from the compensation, but of showing the extent of the injury done the value of the residue of the land: *Railroad v. Ball*, 5 O. S. 568.

In assessing the compensation for a local incidental injury to the residue of the owner's tract of land, arising from the appropriation of the right of way and construction of a railroad, whether a local incidental benefit arising from the railroad structure to the residue of the tract, but not connected either in locality or subject-matter with the injury, can be taken into the account in estimating the compensation for the damages—quaere: *Railroad v. Ball*, 5 O. S. 568.

In a proceeding by a railroad corporation for an appropriation of a right of way under the act of April 30, 1852 (50 v. 201), the jury, after allowing for the full value of the land actually appropriated for the right of way, in view of all its uses and relations, without deductions for benefits of any kind, in their estimate and assessment of the incidental damages accruing to other lands of the owner, can not legally take into consideration and make allowance for general benefits—or such as accrue to the community and vicinage at large—from the construction of the work proposed. Whether special benefits, or such as accrue directly or solely to the owner of the lands appropriated, may be taken into consideration and allowed for—quaere: *Railroad v. Collett*, 6 O. S. 182.

A city ordinance directing the appropriation of lands for the extension of a public street, requiring the costs of the appropriation proceedings, including the compensation that may be awarded to the owners, shall be assessed upon the abutting property of such owners, violates this section: *Rhoades v. Toledo*, 6 O. C. C. 9, 3 O. C. D. 325 [affirmed, without report, *Toledo v. Rhodes*, 51 O. S. 562]; see, to the same effect, *Railway v. Cincinnati*, 62 O. S. 465; *Dayton v. Bauman*,

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66 O. S. 379; Carlisle v. Cincinnati, 8 O. C. C. (N.S.) 46, 19 O. C. D. 81 [affirmed, without report, Carlisle v. Cincinnati, 77 O. S. 637].
The opposite view was taken in earlier Ohio cases: Cleveland v. Wick, 18 O. S. 303; Chamberlain v. Cleveland, 34 O. S. 551; Raymond v. Cleveland, 42 O. S. 522; Caldwell v. Carthage, 49 O. S. 334; Henkel v. Cincinnati, 58 O. S. 726.

VI. COMPENSATION ASCERTAINED BY JURY.

“It has been held in Willyard v. Hamilton, 7 O. (pt. 2) 111, that the value of property taken for public uses might rightfully be assessed by commissioners, it not being a case for trial by jury, secured by the constitution, and that the proceeding need not be had in a court of justice. And the reason why it was not secured by the constitution was, that it had never been so regarded in England or this country prior to the adoption of that instrument. This course of proceeding by commissioners had been much complained of as unjust and oppressive to the owner of the property; and to make at once a proceeding within the protection of the constitution, and to be pursued in a court of justice with a common-law jury, this § 5, of Art. XIII, was inserted when the constitution was revised. It intended to afford the party the same protection as in other cases of jury trial, no more and no less”: Work v. State, 2 O. S. 296.

Where a railway corporation has commenced proceedings to appropriate land for a right of way and damages have been found by the jury, and the corporation then abandons that right of way, the landowner can not enforce such verdict: State, ex rel., v. Railroad, 17 O. S. 103.

In proceedings by a corporation to appropriate private property, there must be a judgment confirming the verdict of the jury, before the corporation is entitled, by a deposit of the amount of such verdict, to possession of the property appropriated: Wagner v. Railway, 38 O. S. 32.

VII. MODE OF COMPENSATION PRESCRIBED BY LAW.

If a statute which complies with the requirements of the constitution prescribes the method of demanding compensation, such method is exclusive: Railway v. Whitacre, 8 O. S. 590; Hueston v. Railway, 4 O. S. 685; Akron v. McComb, 18 O. 229.

The constitution of 1851 rendered invalid prior legislation as to the method of ascertaining compensation which did not comply with the provisions of such constitution: Canal & Hydraulic Co. v. Fitzgerald, 10 O. S. 513.

1 Debates, 260, 444-447, 458; 2 Debates, 644, 667, 668, 674-676, 841, 849-851, 863, 870.

Organization of cities, etc.

SECTION 6. The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

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| <p>I. Applied, cited, construed, referred to, etc.</p> <p>II. Scope and effect.</p> <p>III. Organization of cities and villages.</p> <p>IV. General laws.</p> <p>V. Taxation.</p> | <p>VI. Assessment.</p> <p>A. Existence and nature of power.</p> <p>B. Purpose for which assessment may be levied.</p> <p>C. Apportionment.</p> <p>D. Source of power.</p> <p>VII. Borrowing money, etc.</p> <p>VIII. Specific illustrations.</p> |
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I. APPLIED, CITED, CONSTRUED, REFERRED TO, ETC.

Cass v. Dillon, 2 O. S. 607; Hill v. Higdon, 5 O. S. 243; McGill v. State, 34 O. S. 228; State v. Powers, 38 O. S. 54; State v. Pugh, 43 O. S. 98; State, ex rel., v. Anderson, 44 O. S. 247; Marmet v. State, 45 O. S. 63; Kenton v. State, ex rel., 52 O. S. 59; State v. Gardner, 54 O. S. 24; Hixson v. Burson, 54 O. S. 470; Walsh v. Barron, 61 O. S. 15; Cincinnati v. Taft, 63 O. S. 141; Platt v. Craig, 66 O. S. 75; State, ex rel., v. Jones, 66 O. S. 453; Mt. Vernon v. State, ex rel., 71 O. S. 428; Emmert v. Elyria, 74 O. S. 185; Nye v. State, 1 O. C. C. 355, 1 O. C. D. 198 [affirmed, without report, State v. Nye, 18 Bull. 412]; Norwood v. Association, 7 O. C. C. 95, 3 O. C. D. 680; State, ex rel., v. Price, 8 O. C. C. 25, 4 O. C. D. 296; Hunt v. Hunter, 11 O. C. C. 69, 5 O. C. D. 90; Ampt v. Cincinnati, 12 O. C. C. 119, 5 O. C. D. 356 [affirmed, without report, Alter v. Cincinnati, 56 O. S. 47]; Newton v. Toledo, 18 O. C. C. 756, 8 O. C. D. 607 [affirmed, without report, Toledo v. Newton, 52 O. S. 649];

Lloyd v. Dollisin, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, State, ex rel., v. Dollison, 68 O. S. 688]; Raynolds v. Cleveland, 13 O. D. (N.P.) 125; Bank v. Trustees, 13 O. D. (N.P.) 472; Defiance v. Schmidt, 123 Fed. 1, 59 C. C. A. 159, 14 O. F. D. 408.

II. SCOPE AND EFFECT.

This section relates exclusively to cities and villages, and can have no application to counties or county commissioners: State, ex rel., v. Commissioners, 17 O. S. 568.

This section has no application to school districts: Bank v. Trustees, 98 Fed. 524, 13 O. F. D. 318.

Under the restrictive and mandatory provisions of the first and sixth sections of Art. XIII, of the constitution of 1851, the general assembly can not, by a special act, create a corporation, nor can it, by special act, confer additional powers on a corporation already existing; and in the purview and application of the provisions of those sections of the constitution, there is no distinction between private and municipal corporations: State, ex rel., v. Cincinnati, 20 O. S. 18.

The power vested in the general assembly under this section, to restrict the powers of taxation and assessment by municipal corporations, is subject to the limitations imposed by § 10, Art. I, of the constitution of the United States, which declares, that "no state shall pass any law impairing the obligations of contracts," and of § 28, Art. II, of the state constitution: Goodale v. Fennell, 27 O. S. 426.

It was not the design of the framers of the constitution, or of the people in adopting it, to withhold the power to provide such local or special laws as the public necessities might require: McGill v. State, 34 O. S. 228.

The restrictions placed upon the legislature by this section are mandatory and not merely directory: Griswold v. Pelton, 34 O. S. 482.

Article XIII, § 6, does not conflict with Art. II, § 26: Falk, Ex parte, 42 O. S. 638.

The courts of the state have no power to declare a statute conferring the power of assessment on municipal corporations of a certain grade and class, for the improvement of their streets, invalid, on the ground that the statute does not adequately restrict the power so as to prevent abuse. The duty imposed by § 6, Art. XIII, of the constitution, is, in this regard, addressed to the conscience and judgment of the legislature, and is not the subject of judicial correction: Parsons v. Columbus, 50 O. S. 460.

Section 19, of Art. I, of the constitution is a limitation upon § 6, of Art. XIII, as to the power of assessments: Railway v. Cincinnati, 62 O. S. 465; see, also, Dayton v. Bauman, 66 O. S. 379.

It is evident from the legislation and decisions since the constitution, as well as from the manifest purpose of § 6, Art. XIII, of the constitution, directing the general assembly to provide for the organization of cities and incorporated villages by general laws, that all municipal corporations are comprised within its terms and that outside of the system so provided for there is no room for a corporation having general municipal powers: Railroad v. North Bend, 70 O. S. 46.

It was the purpose of the legislature, in adopting the municipal code, to carry out the constitutional requirements of this section, therefore, where one of two constructions of a section or sections of such municipal code will effect this purpose and the other will not, the former will be adopted: Smith v. Rockford, 4 O. N. P. (N.S.) 513, 17 O. D. (N.P.) 649.

III. ORGANIZATION OF CITIES AND VILLAGES.

Proceedings to annex contiguous territory to the corporate limits of the town, in pursuance of the fourteenth section of the act to provide for the organization of cities and incorporated villages (50 v. 223, repealed, 66 v. 284), are not in contravention of the provisions of the constitution: Powers v. Commissioners, 8 O. S. 285; Blanchard v. Bissell, 11 O. S. 96.

The general act of May 3, 1852 (50 v. 223, repealed, 66 v. 284), "to provide for the organization of cities and incorporated villages," did not annihilate and recreate the municipal corporations of the state, but recognized and continued them, leaving their corporate identity unaffected: State, ex rel., v. Perrysburg, 14 O. S. 472.

The municipal code of 1902 did not destroy the municipal corporations then in force; and hamlets then existing having a population of less than 5,000 at the last federal census became villages: Railroad v. North Bend, 70 O. S. 46 [affirming North Bend v. Railroad, 1 O. C. C. (N.S.) 301, 15 O. C. D. 268].

The power of creating municipal corporations necessarily implies authority to confer upon them such police powers as may be necessary for their internal government; and a resolution of a city council requiring lots, on which is stagnant water, to be filled up, being a reason-

able sanitary measure for preserving the health of the inhabitants, is not in conflict with the constitution: *Bliss v. Kraus*, 16 O. S. 54.

IV. GENERAL LAWS.

The act of April 16, 1870 (67 v. 141), "to prescribe the corporate limits of Cincinnati," is a special act. It assumes to confer upon the corporation of that city additional powers; to confer, on certain conditions, the power of municipal government, the power of police regulation, the power of judicial jurisdiction, and of assessment and taxation, over a number of outlying incorporated suburban villages and other territory not before within the limits of the city; and is therefore repugnant to the constitution, and of no binding force and validity: *State, ex rel., v. Cincinnati*, 20 O. S. 18.

Under the restrictive and mandatory provisions of this and the first section of this article, the general assembly can not, by a special act, confer additional powers on a corporation already existing; and in the purview and application of the provisions of these sections, there is no distinction between private and municipal corporations: *State, ex rel., v. Cincinnati*, 20 O. S. 18.

The principle seems to be, that a law which relates to certain municipal corporations as a class, and, having a like effect upon all within the class, is general; but one that relates to a particular municipality of a class, is special: *Bronson v. Oberlin*, 41 O. S. 476.

The organization and government of cities is left, by the constitution, to the general assembly, with the requirement (§ 6, Art. XIII) that it shall, by general laws, provide therefor; and the entire system of municipal government in this state has, in the exercise of this power, been created by the legislature: *State, ex rel., v. Hawkins*, 44 O. S. 98.

Under the power to organize cities and villages, the general assembly is authorized to classify municipal corporations, and an act relating to any such class may be one of a general nature: *State, ex rel., v. Hudson*, 44 O. S. 137.

An act which provides a form of government for all cities having a population of not less than 27,000 and not more than 34,000, except cities of the third grade, second class, was held not to contravene this section either as to the general classification or as to the exception: *State, ex rel., v. Baker*, 55 O. S. 1; see, also, *Alter v. Cincinnati*, 56 O. S. 47 [modifying *Ampt v. Cincinnati*, 12 O. C. C. 119, 5 O. C. D. 356]; *Seifert v. Weidner*, 12 O. C. C. 1, 5 O. C. D. 506 [affirmed, *Seifert v. Weidner*, 35 Bull. 399]; *State v. Gardner*, 2 O. N. P. 405, 4 O. D. (N.P.) 34 [overruled in part, *State v. Gardner*, 54 O. S. 24]; *Dorgan v. Columbus*, 12 O. D. (N.P.) 121.

V. TAXATION.

The authority and duty to prevent an abuse of the powers of taxation and assessment by municipal corporations is intrusted by this section of the constitution to the general assembly, and not to the courts of the state. And the power of the legislature to authorize local taxation can not be judicially denied on the ground that the purpose for which it is exercised is not local, unless the absence of all special local interest is clearly apparent: *Walker v. Cincinnati*, 21 O. S. 14.

Where the authority given is to construct a line of railroad, having one of its termini in such city, it does not affect the question of power, that the road, when constructed, will lie mainly outside of the state of Ohio. It is the corporate interest of the municipality which determines her right of taxation, and not the location of the road, which may well be constructed with the consent of the state into or through which it may pass: *Walker v. Cincinnati*, 21 O. S. 14.

It is well settled in this state, by repeated adjudications, that, independent of constitutional prohibitions, it is within the legitimate scope of legislative power to authorize a city to aid in the construction of railroads or other public improvements in which such city has a special interest, and to impose taxes upon its citizens for that purpose: *Walker v. Cincinnati*, 21 O. S. 14.

It follows that it is equally competent for the legislature to authorize the entire construction of such improvements by a city having a special interest therein, and to empower the local authorities to provide means therefor by the taxation of its citizens: *Walker v. Cincinnati*, 21 O. S. 14.

Taxation can only be authorized for public purposes. Where, therefore, a statute authorizes a county, township or municipality to levy taxes not above a given per cent. on the taxable property of the locality, for the purpose of building so much of a railroad as can be built for that amount, and the part of a railroad to be built can be of no public utility unless used to accomplish an unconstitutional purpose, such tax is illegal, and can not be imposed: *Taylor v. Commissioners*, 23 O. S. 22.

This section does not render invalid a statute by which the legislature authorizes the state board of health to compel a municipal corporation to install a sewage purification plant: *Board of Health v. Greenville*, 86 O. S. 1 [reversing *Greenville v. Demorest*, 14 O. C. C. (N.S.) 113].

VI. ASSESSMENT.

A. Existence and nature of power. The power of levying local assessments is well settled in Ohio: *Cleveland v. Wick*, 18 O. S. 303.

In a general sense, a tax is an assessment, and an assessment is a tax; but there is a well-recognized distinction between them—an assessment being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity, and levied with reference to special benefits to the property assessed: *Lima v. Cemetery Association*, 42 O. S. 128.

The constitution so limits the power of assessments as to prevent its abuse: *Cincinnati v. Oliver*, 31 O. S. 371.

The general assembly is empowered by this section to restrict the use of assessments by cities and villages, so as to prevent the abuse of the power: *Alder v. Whitbeck*, 44 O. S. 539.

The limitation of § 19, Art. I, of the constitution on § 6, of Art. XIII, as to assessments, goes to the full extent of prohibiting the raising of money directly or indirectly by assessment to pay compensation, damages of costs, for lands appropriated by the public for public use: *Railway v. Cincinnati*, 62 O. S. 465 [approved and followed, *Dayton v. Bauman*, 66 O. S. 379].

Section 53 of the municipal code of 1902 (G. C. § 3819, et seq., prior to the amendment of April 21, 1904; 97 O. L. 126), which provided that assessments upon a lot for any and all purposes, within a period of five years, were limited to thirty-three per centum of the tax value thereof, was so construed that assessments levied prior to that enactment, and within the five-year period were to be considered in applying the limitation to assessments subsequently levied: *Gray v. Toledo*, 80 O. S. 445.

An act does not contravene this section because the lands within such district are to be assessed for the improvement "in proportion to the benefits which may result from said improvement to said lots and lands," and there is no express provision that such assessments shall not in any case exceed the amount of benefit conferred on such property; if it should do this in any particular case, it would be unconstitutional: *Weston v. Commissioners*, 6 O. C. C. 641, 3 O. C. D. 625.

A city has no constitutional power to include damages to abutting owners in their assessments: *Freeman v. Hunter*, 7 O. C. C. 117, 3 O. C. D. 689 [affirmed, without report, *Hunter v. Freeman*, 51 O. S. 574].

B. Purpose for which assessment may be levied. The exercise of the power of assessment by the city of Cincinnati upon real estate, by the front foot, to pay for improving an adjoining street, is not a violation of the constitution of 1851: *Ernst v. Kunkle*, 5 O. S. 521.

Legislation authorizing cities and villages to levy special assessments for the purpose of improving streets, upon real property peculiarly and specially benefited, is not repugnant to the constitution. And such assessment may be made upon property abutting on such streets, in proportion to the number of feet front abutting thereon: *Bonsall v. Lebanon*, 19 O. 418; *Scovill v. Cleveland*, 1 O. S. 126; *Hill v. Higdon*, 5 O. S. 243; *Marion v. Epler*, 5 O. S. 250; *Reeves v. Treasurer*, 8 O. S. 333; *Foster v. Commissioners*, 9 O. S. 540; *Railroad v. Connelly*, 10 O. S. 159; *Maloy v. Marietta*, 11 O. S. 636; *Creighton v. Scott*, 14 O. S. 438; *State, ex rel., v. Commissioners*, 17 O. S. 558.

The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improvement of streets and sidewalks, exists to the same extent under the present constitution as under that of 1802: *Reeves v. Treasurer*, 8 O. S. 333.

Lands appropriated by a railroad company for its track through a city, and crossing the improved street at right angles, and upon which the track was constructed after the work had been completed, is liable to such assessment. And as between the railroad company and the person performing the work (whatever may be the rights of bona fide mortgagees of said railroad), the lands so appropriated may be sold to pay said assessment: *Railroad v. Connelly*, 10 O. S. 159.

If land is appropriated for opening a street, the cost of such appropriation can not be assessed back upon the abutting property: *Dayton v. Bauman*, 66 O. S. 379; *Railway v. Cincinnati*, 62 O. S. 465.

C. Apportionment. Such assessment need not be levied upon all lands on such street, but only on those bounding upon the improvement or near thereto: *Scovill v. Cleveland*, 1 O. S. 126.

An assessment may be levied by the acre: *Foster v. Commissioners*, 9 O. S. 540.

The assessment, whether by the front foot or upon the value assessed for taxation, must be uniform, operating alike upon all the lots or lands abutting upon the improvement, and the fact that one or more of the tracts may not have been benefited by the improvement, will not render such assessment invalid: *Railroad v. Connelly*, 10 O. S. 159.

Assessments made on the principle of special benefits, without reference to frontage, are not unconstitutional: *Chamberlain v. Cleveland*, 34 O. S. 551.

D. Source of power. The power to authorize assessments as distinguished from taxes proper, is comprehended in the general grant of legislative power to the general assembly: *Reeves v. Treasurer*, 8 O. S. 333; *Baker v. Cincinnati*, 11 O. S. 534.

VII. BORROWING MONEY, ETC.

A municipal corporation is without capacity to acquire land by purchase for the purpose of donating the same to a corporation or person as an inducement to build and operate manufacturing plants within the municipality: *Markley v. Mineral City*, 58 O. S. 430.

This section of the constitution deals with an existing and inherent power in municipalities to borrow money, to contract debts and to levy taxes. It does not require, or contemplate, a limitation as to the amount of the total indebtedness that may be incurred by a municipality. Its object is to prevent an abuse of such power, and this may be done by restricting the power. The nature and extent of this restriction are matters left to the legislature: *Cleveland v. Cleveland*, 7 O. N. P. (N.S.) 249, 18 O. D. (N.P.) 619.

VIII. SPECIFIC ILLUSTRATIONS.

The statutes, authorizing municipal corporations to assess the cost of improving streets upon the lots and lands abutting thereon, in force in the year 1853, do not contravene § 6, of Art. XIII, of the constitution of 1851: *Maloy v. Marietta*, 11 O. S. 636.

For illustrations of classification and the various holdings thereon, see *State v. Baughman*, 38 O. S. 455; *State v. Brewster*, 39 O. S. 653; *Raymond v. Cleveland*, 42 O. S. 522; *State, ex rel., v. Smith*, 44 O. S. 348; *State v. Hudson*, 44 O. S. 137; *Platt v. Craig*, 66 O. S. 75 [reversing *State, ex rel., v. Jones*, 22 O. C. C. 682, 11 O. C. D. 496]; *Carr v. West Carrollton*, 8 O. C. C. 1, 4 O. C. D. 303; *Longworth v. Cincinnati*, 17 O. C. C. 15, 9 O. C. D. 744 [affirmed, without report, *Cincinnati v. Longworth*, 61 O. S. 659]; *State v. Toledo*, 13 O. C. D. 327; *Shaw v. Jones*, 4 O. N. P. 372, 6 O. D. (N.P.) 453; *State, ex rel., v. Pohling*, 1 O. C. C. 486, 1 O. C. D. 271.

It is impossible that a law of a general nature having a uniform operation throughout the state should contain a legal provision suspending its operation in a single city of the state for an indefinite time. The provision, therefore, found in § 216, of the municipal code, "that any person or persons hereafter appointed pursuant to the provision of an act entitled, 'an act relating to market houses in cities of the second grade, of the first class,' passed April 26, 1898, or by whatever authority for the purpose provided herein, shall continue to act for the purposes for which he or they were appointed, with the powers herein granted and no others, until the completion of the improvement in connection with which they were appointed," is in contravention of the constitution of the state, and invalid: *Slatmyer v. Springborn*, 5 O. C. C. (N.S.) 89, 16 O. C. D. 100 [affirmed, without report, *Slatmyer v. Springborn*, 72 O. S. 683].

That part of original § 2267 (repealed, 96 v. 96; see § 1536-221) which provided that no public improvement, except sidewalks and sewers, should be made by cities of the third grade, of the first class, until the majority of the owners of the property to be assessed therefor had petitioned the council for the improvement, etc., was legislation upon a subject of a general nature, and was unconstitutional, because it did not have uniform application throughout the state. Hence, where a street improvement was made in conformity with the requirements of the remaining constitutional provisions of the statute, by a municipality of the class and grade specially provided for in the unconstitutional part above referred to, an assessment to pay the costs thereof will not be enjoined merely because the procedure was not in accordance with the requirements of the unconstitutional part: *Adkins v. Toledo*, 6 O. C. C. (N.S.) 433, 17 O. C. D. 417.

If an improvement was ordered before the supreme court held the classification of municipal corporations to be unconstitutional, and such proceedings were authorized by statutes relating to such grade and class, injunction would not issue to restrain the performance of such contract after the change of judicial opinion on the part of the supreme court, although under the general statute on the subject of such improvements a certificate should have been filed showing that there was

money in the treasury for such improvement or in process of collection: *Columbus v. Bohl*, 1 O. N. P. (N.S.) 469, 13 O. D. (N.P.) 569.

General Code §§ 6594 and 6495, providing for the improvement of ditches in villages, is not unconstitutional because wanting in "due process" in not providing for a jury to assess compensation, for which provision is made in other sections of the same chapter, or in not limiting the power of taxation and assessment, inasmuch as the constitutional limitation applies to cities and villages, and not to counties: *McCastin v. Perrysburg*, 6 O. N. P. (N.S.) 48, 18 O. D. (N.P.) 196.

A statute which authorizes a village having within its limits a college or university to provide against the evils resulting from the sale of intoxicating liquor, was held not to be unconstitutional: *Bronson v. Oberlin*, 41 O. S. 476.

1 Debates, 260, 447, 458; 2 Debates, 668, 676, 838, 851, 863, 864, 870.

SECTION 7. No act of the general assembly, authorizing associations with banking powers, shall take effect until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election.

Associations with banking powers.

Cited: *Bank v. Hines*, 3 O. S. 1; *State, ex rel., v. Governor*, 5 O. S. 528; *Ehrman v. Insurance Co.*, 35 O. S. 324; *State v. Gibbs and Laning*, 7 O. N. P. (N.S.) 345, sub nomine, *State v. Laning*, 18 O. D. (N.P.) 681.

This section, as well as the second and third, is prospective and not retrospective, in its intent and application: *Bank v. Wright*, 6 O. S. 318; *State v. Roosa*, 11 O. S. 17.

The advancing of money by a building association to its members, as provided in the act of February 21, 1867 (64 v. 18; see G. C. § 9657), is not the exercise of banking powers: *Building Association v. Gallagher*, 25 O. S. 208.

The phrase "associations with banking powers," relates only to banks of issue: *Dearborn v. Savings Bank*, 42 O. S. 617 [approved and followed in *Bates v. Loan Association*, 42 O. S. 655].

1 Debates, 707, 709; 2 Debates, 20, 344-346, 392-396, 402-424, 795-803, 806, 819, 820, 824, 850, 851, 864, 870.

ARTICLE XIV.

JURISPRUDENCE.

SECTION 1. The general assembly, at its first session after the adoption of this constitution, shall provide for the appointment of three commissioners, and prescribe their tenure of office, compensation, and the mode of filling vacancies in said commission.

Commissioners.

Cited: *Louderman v. Judy*, 2 O. C. C. 351, 1 O. C. D. 526.

1 Debates, 338, 551-554; 2 Debates, 331, 838, 864, 870.

SECTION 2. The said commissioners shall revise, reform, simplify, and abridge the practice, pleadings, forms, and proceedings of the courts of record of this state; and, as far as practicable and expedient, shall provide for the abolition of the distinct forms of action at law, now in use, and for the administration of justice by a uniform mode of proceeding, without reference to any distinction between law and equity.

Their duties.

Cited: *State, ex rel., v. Baldwin*, 77 O. S. 532.

1 Debates, 338, 554-577; 2 Debates, 319-321, 324-326, 331, 838, 864, 870.

SECTION 3. The proceedings of the commissioners shall, from time to time, be reported to the general assembly, and be subject to the action of that body.

Their report.

1 Debates, 338; 2 Debates, 331, 838, 864, 870.

ARTICLE XV.

MISCELLANEOUS.

Seat of govern-
ment.

SECTION 1. Columbus shall be the seat of government, until otherwise directed by law. (*See Const. 1802, Art. VII, § 4.*)

See Const. 1802, Art. VII, § 4.

Cited by mistake: *Jones v. Commissioners*, 2 O. C. C. (N.S.) 14.

1 Debates, 164, 259; 2 Debates, 318, 568, 633, 664, 854, 864, 870.

Public printing.

SECTION 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law. (Amended September 3, 1912.)

Vote: "Yes," 319,612; "No," 192,378.

Original § 2 read as follows: "Sec. 2. [Public printing.] The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, by such executive officers, and in such manner, as shall be prescribed by law."

Cited: *Bridge Co. v. Campbell*, 60 O. S. 406; *Banks v. Manchester*, 128 U. S. 244, 6 O. F. D. 216.

Referred to as showing that the constitutional requirement that contracts must be let to the lowest responsible bidder applies only to public printing: *Coppin v. Herrmann*, 7 O. N. P. 6, 9 O. D. (N.P.) 767.

A mandamus will not be granted at the suit of the lowest responsible bidder for public printing, to compel the commissioners of printing to award him the contract, where a contract has already, by mistake, been made with a higher bidder; where the amount of difference between the two bids is not shown; where the application has been unreasonably delayed, and where no good reason appears why a remedy was not sought, by injunction or otherwise, in an action jointly against the contractor and the commissioners: *State, ex rel., v. Commissioners*, 18 O. S. 386.

The dividing of printing into separate classes, and the letting by separate contracts, with the exception of the seventh class, when the printing may be let in portions, is valid: *State, ex rel., v. Commissioners*, 52 O. S. 81.

1 Debates, 163, 230; 2 Debates, 318, 560, 582, 589, 632, 633, 664, 854, 864, 870.

Receipts and
expenditures.

SECTION 3. An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom, and on what account, shall, from time to time, be published, as shall be prescribed by law.

1 Debates, 163, 237-239; 2 Debates, 151, 318, 564-566, 633, 664, 854, 864, 870.

Who eligible to
office.

SECTION 4. No person shall be elected or appointed to any office in this state, unless he possess the qualifications of an elector.

Cited: *State, ex rel., v. Ratterman*, 58 O. S. 731; *Boyd v. Nebraska*, ex rel., 143 U. S. 135; *Burch v. Harte*, 1 O. N. P. (N.S.) 477, 14 O. D. (N.P.) 433.

This section does not, by implication, forbid the legislature to require other reasonable qualifications for office: *State, ex rel., v. Covington*, 29 O. S. 102.

The place of medical superintendent of a hospital for the insane, under the act of 1876 (73 v. 80), is an "office" within the meaning of this section: *State, ex rel., v. Wilson*, 29 O. S. 347. See Art. V.

The position of trustee of the Ohio state university is an office: *Thomas v. University*, 195 U. S. 207, 14 O. F. D. 433.

The position of supervising judge of the court of common pleas is said not to be an office in State, ex rel., v. Hunt, 84 O. S. 143.

The provisions of the act entitled, "An act to prevent corrupt practices at elections" (92 v. 123) are not in conflict with this section: Mason v. State, ex rel., 58 O. S. 30.

The position of notary public is a public office, and by virtue of this section a woman can not hold such office: State, ex rel., v. Adams, 58 O. S. 612.

The act of 86 v. 221, creating a board of workhouse directors, composed of females for the female department, creates an office, and this can only be held by electors: State, ex rel., v. Rust, 4 O. C. C. 329, 2 O. C. D. 577.

One foreign born, who appeared before a court of record prior to reaching the age of twenty-one years and made oath that it was his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance or fidelity to any foreign prince, potentate, state or sovereign whatsoever, and particularly to Victoria, Queen of Great Britain, whose subject he then was, did not thereby become a citizen of the United States or entitled to the privileges of an elector upon attaining his majority; and where such an one has been elected to the office of councilman and has taken his seat, a judgment of ouster will be entered against him: State, ex rel., v. Collister, 6 O. C. C. (N.S.) 33, 17 O. C. D. 529.

Deputy supervisors of elections are not officers within the meaning of the Ohio constitution: State, ex rel., v. Craig, 8 O. N. P. 148, 10 O. D. (N.P.) 577 [affirmed, State, ex rel., v. Craig, 21 O. C. C. 175, 11 O. C. D. 553].

The position of deputy clerk of the probate court is not an office within the meaning of this section, and a woman may therefore be appointed to such position: Warwick v. State, 25 O. S. 21.

1 Debates, 163, 258; 2 Debates, 318, 567, 633, 664, 854, 864, 870.

SECTION 5. No person who shall hereafter fight a duel, assist in the same as second, or send, accept, or knowingly carry, a challenge therefor, shall hold any office in this state. Duelists ineligible.

Referred to: Burch v. Harte, 1 O. N. P. (N.S.) 477, 14 O. D. (N.P.) 433.

1 Debates, 164, 260-263; 2 Debates, 165, 318, 569, 578, 590, 633, 664, 854, 864, 870.

SECTION 6. Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this state. Lotteries.

Under this section lotteries are rendered invalid; and no statutory provisions can render them valid: Simpkins v. Trust Co., 5 O. N. P. 411, 8 O. D. (N.P.) 510.

1 Debates, 164, 263; 2 Debates, 318, 569, 633, 664, 854, 864, 870.

SECTION 7. Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this state, and also an oath of office. Oath of officers.
(See Const. 1802, Art. VII, § 1.)

See Const. 1802, Art. VII, § 1.

Cited: State, ex rel., v. Brennan, 49 O. S. 33; State, ex rel., v. Hunt, 84 O. S. 143; State, ex rel., v. Mackelfresh, 5 O. N. P. (N.S.) 43, 17 O. D. (N.P.) 709.

All officers should take the oath required by the constitution, whether the law under which they hold office prescribe this duty or not. The injunctions of the constitution in this respect are as obligatory as those of a statute could be: State, ex rel., v. Kennon, 7 O. S. 546.

1 Debates, 163, 293; 2 Debates, 318, 634, 664, 854, 864, 870.

See § 18, Schedule.

SECTION 8. There may be established, in the secretary of state's office, a bureau of statistics, under such regulations as may be prescribed by law. Bureau of statistics.

2 Debates, 293, 755, 756, 854, 864, 870.

License to traffic
in intoxicating
liquors.

SECTION 9. License to traffic in intoxicating liquors shall be granted in this state, and license laws operative throughout the state shall be passed with such restrictions and regulations as may be provided by law, and municipal corporations shall be authorized by general laws to provide for the limitation of the number of saloons. Laws shall not be passed authorizing more than one saloon in each township or municipality of less than five hundred population, or more than one saloon for each five hundred population in other townships and municipalities. Where the traffic is or may be prohibited under laws applying to counties, municipalities, townships, residence districts, or other districts now prescribed by law, the traffic shall not be licensed in any such local subdivision while any prohibitory law is operative therein, and nothing herein contained shall be so construed as to repeal, modify or suspend any such prohibitory laws, or any regulatory laws now in force or hereafter enacted, or to prevent the future enactment, modification or repeal of any prohibitory or regulatory laws. License to traffic in intoxicating liquors shall not be granted to any person who at the time of making application therefor is not a citizen of the United States and of good moral character. License shall not be granted to any applicant who is in any way interested in the business conducted at any other place where intoxicating liquors are sold or kept for sale as a beverage nor shall such license be granted unless the applicant or applicants are the only persons in any way pecuniarily interested in the business for which the license is sought and no other person shall be in any way interested therein during the continuance of the license; if such interest of such person shall appear, the license shall be deemed revoked. If any licensee is more than once convicted for a violation of the laws in force to regulate the traffic in intoxicating liquors, his license shall be deemed revoked, and no license shall thereafter be granted to him. License to traffic in intoxicating liquors shall not be granted unless the place of traffic under such license shall be located in the county in which the person or persons reside whose duty it is to grant such license, or in a county adjoining thereto. The word "saloon" as used in this section is defined to be a place where intoxicating liquors are sold, or kept for sale, as a beverage in quantities less than one gallon.

INTOXICATING LIQUORS.

	For License to traffic in intoxicating liquors.
	Against License to traffic in intoxicating liquors.

The voter shall indicate his choice by placing a cross-mark within the blank space opposite the words "For License," if he desires to vote in favor of the article above mentioned and opposite the words "Against License," within the blank space if he desires to vote against said article. If a cross-mark is

placed opposite both phrases or neither phrase, then the vote upon the subject shall not be counted.

If the votes for license shall exceed the votes against license, then the article above mentioned shall become section 9 of article XV of the constitution, and the present section 9 of said article, also known as section 18 of the schedule shall be repealed. (As amended September 3, 1912.)

Vote: "For," 273,361; "Against," 188,825.

Original § 9 read as follows: "No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the general assembly may by law, provide against evils resulting therefrom." [See schedule to constitution of 1851, § 18.]

SECTION 10. Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision. (Adopted September 3, 1912.)

Vote: "Yes," 306,767; "No," 204,580.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be submitted to the electors, for their approval or rejection, on a separate ballot without party designation of any kind, at either a special or a general election as the general assembly may prescribe. Such proposed amendments shall be published once a week for five consecutive weeks preceding such election, in at least one newspaper in each county of the state, where a newspaper is published. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately. (As amended September 3, 1912.)

This constitution
be amended, and
how.

Vote: "Yes," 271,827; "No," 246,687.

Original § 1 read as follows: "Sec. 1. [This constitution be amended, and how.] Either branch of the general assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be published in at least one newspaper in each county of the state, where a newspaper is published, for six months preceding the next election for senators and representatives, at which time the same shall be submitted to the electors, for their approval or rejection; and if a majority of the electors, voting at such election, shall adopt such amendments, the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately."

An amendment to the constitution, submitted by the legislature under the provisions of this section of that instrument, requires, for its adoption, a majority of all the votes cast at the election for senators and representatives at which it is submitted to the electors of the state for their approval or rejection: State, ex rel., v. Foraker, 46 O. S. 677.

In the constitution of this state there is no limitation upon the legislative power to provide by general laws the manner of submitting to a vote of the people a proposed amendment to the constitution, except that when there is more than one amendment to be submitted they shall be so submitted that the elector shall be enabled to vote separately on each. This does not mean that each amendment must be upon a separate ballot or be deposited in a separate ballot box, nor that each or all of the proposed amendments may not be voted for on ballots on which are the names of candidates for office who are voted for by the elector. It merely requires that the elector shall be "enabled" to record his vote upon each amendment separately if he so desires; that is, that he may vote for one or more and against one or more at the same time if he chooses so to do. If, being so enabled, he chooses not to vote at all upon any or all of the amendments, such failure to vote necessarily operates as a negative vote, because amendments to the constitution must be adopted by a majority of all the votes cast at the election. It was not the design or intention of the constitution to put a premium on ignorance or indifferentism at the same time that it is the duty of every citizen to inform himself and to vote upon every matter submitted to a vote of the people. Out of the proposition that a constitution adopted by the people can be amended only by a majority of the people, it naturally follows that of all the people voting at an election when an amendment to the constitution is submitted, only those should be counted for the amendment who expressly so vote, and this is the whole scope of Art. XVI, § 1, of the constitution of Ohio: *State, ex rel., v. Laylin*, 69 O. S. 1.

The act of the general assembly entitled, "An act to provide for the manner of submission of constitutional amendments and other questions to a vote of the people," passed May 2, 1902 (95 v. 352), enables the elector to vote with or against his party, on each or all of the amendments, or to vote separately upon each and every proposed amendment, or to not vote at all if he so desires. So far as we have been able to discover, the act is not in any respect in conflict with the constitution, and not irreconcilably in conflict with the joint resolutions adopted by the general assembly submitting propositions to amend the constitution: *State, ex rel., v. Laylin*, 69 O. S. 1.

2 Debates, 339, 427, 428, 434, 436, 446, 811, 839, 864, 870.

Same subject.

SECTION 2. Whenever two-thirds of the members elected to each branch of the general assembly shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote on a separate ballot without party designation of any kind at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting for and against the calling of a convention, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. Candidates for members of the constitutional convention shall be nominated by nominating petitions only and shall be voted for upon one independent and separate ballot without any emblem or party designation whatever. The convention shall consist of as many members as the house of representatives, who shall be chosen as provided by law, and shall meet within three months after their election, for the purpose, aforesaid. (As amended September 3, 1912.)

Vote: "Yes," 271,827; "No," 246,687.

Original § 2 read as follows: "Sec. 2. [Same subject.] Whenever two-thirds of the members elected to each branch of the general assembly, shall think it necessary to call a convention, to revise, amend, or change this constitution, they shall recommend to the electors to vote, at the next election for members to the general assembly, for or against a convention; and if a majority of all the electors, voting at said election, shall have voted for a convention, the general assembly shall, at their next session, provide, by law, for calling the same. The convention shall consist of as many members as the house of representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose, aforesaid. (See Const. 1802, Art. VII, § 5.)"

See Const. 1802, Art. VII, § 5; 2 Debates, 339, 428, 429, 434, 436, 446, 811, 839, 864, 870.

SECTION 3. At the general election to be held in the year Same subject.
one thousand nine hundred and thirty-two, and in each twentieth
year thereafter, the question: "Shall there be a convention to
revise, alter, or amend the constitution," shall be submitted to
the electors of the state; and in case a majority of the electors,
voting for and against the calling of a convention, shall decide
in favor of a convention, the general assembly, at its next ses-
sion, shall provide, by law, for the election of delegates, and the
assembling of such convention, as is provided in the preceding
section; but no amendment of this constitution, agreed upon by
any convention assembled in pursuance of this article, shall take
effect, until the same shall have been submitted to the electors
of the state, and adopted by a majority of those voting thereon.
(As amended September 3, 1912.)

Vote: "Yes," 271,827; "No," 246,687.

Original § 3 read as follows: "Sec. 3. [Same subject.] At the gen-
eral election, to be held in the year one thousand eight hundred and
seventy-one, and in each twentieth year thereafter, the question: 'Shall
there be a convention to revise, alter, or amend the constitution,' shall be
submitted to the electors of the state; and, in case a majority of all the
electors, voting at such election, shall decide in favor of a convention,
the general assembly, at its next session, shall provide, by law, for the
election of delegates, and the assembling of such convention, as is pro-
vided in the preceding section; but no amendment of this constitution,
agreed upon by any convention assembled in pursuance of this article,
shall take effect, until the same shall have been submitted to the
electors of the state, and adopted by a majority of those voting
thereon."

Cited: State, ex rel., v. Foraker, 46 O. S. 677.

In pursuance of this section, as originally enacted, the question
"shall there be a convention to revise, alter, or amend the Constitution,"
was submitted to the electors on the 10th day of October, 1871, resulting
in favor of the convention by the following vote:

Whole number of electors voting at said election..	459,990
Whole number of electors voting in favor of the convention	264,970
Whole number of electors voting against the con- vention	104,231

The convention which met on the 13th day of May, 1873 and re-
mained in session one hundred and eighty-six days, submitted a new
Constitution to a vote of the people on the 18th day of August, 1874,
which failed of adoption, the following statement showing the vote
thereon:

Against new Constitution	250,169
For new Constitution	102,885
Majority against new Constitution.....	147,284

In pursuance of this section the question "shall there be a conven-
tion to revise, alter or amend the Constitution," was submitted to the
electors on the 3rd day of November, 1891, resulting adversely to the
convention by the following vote:

Whole number of electors voting at said election...	803,328
Whole number of electors voting in favor of the convention	99,784
Whole number of electors voting against the con- vention	161,722

In pursuance of this section, the question "shall there be a con-
vention to revise, alter or amend the Constitution," was submitted to
the electors on the 8th day of November, 1910, resulting in favor of
the convention by the following vote:

Whole number of electors voting at said election..	932,262
Whole number of electors voting in favor of the convention	693,263
Whole number of electors voting against the con- vention	161,722

Pursuant to the foregoing vote, the members of the constitutional convention were elected November 7th, 1911. The convention met January 9, 1912, and remained in session 83 days, adjourning from June 7th to August 26, 1912, at which date it adjourned sine die. It submitted forty-one amendments, numbered consecutively, including a schedule of amendments; and in addition thereto a separate proposition for and against a license to traffic in intoxicating liquors; to the electors of the state at a special election held September 3, 1912.

The official numbers of the amendments, the official designations of the amendments, and the vote upon each amendment thus proposed were as follows:

Amendment No. 1. Article I, § 5: "Reform in Civil Jury System." Vote: "Yes," 345,686; "No," 203,953.

Amendment No. 2. Article I, § 9: "Abolition of Capital Punishment." Vote: "Yes," 258,706; "No," 303,246.

Amendment No. 3. Article I, § 10: "Deposition by State and Comment on Failure of Accused to Testify in Criminal Cases." Vote: "Yes," 291,717; "No," 227,547.

Amendment No. 4. Article I, § 16: "Suits Against the State." Vote: "Yes," 306,764; "No," 216,634.

Amendment No. 5. Article I, § 19a: "Damage for Wrongful Death." Vote: "Yes," 355,605; "No," 195,216.

Amendment No. 6. Article II, §§ 1, 1a, 1b, 1c, 1d, 1e, 1f, 1g: "Initiative and Referendum." Vote: "Yes," 312,592; "No," 231,312.

Amendment No. 7. Article II, § 8: "Investigations by each House of General Assembly." Vote: "Yes," 348,779; "No," 175,337.

Amendment No. 8. Article II, § 16: "Limiting Veto Power of Governor." Vote: "Yes," 282,412; "No," 254,186.

Amendment No. 9. Article II, § 33: "Mechanics' and Builders' Liens." Vote: "Yes," 278,582; "No," 242,385.

Amendment No. 10. Article II, § 34: "Welfare of Employees." Vote: "Yes," 353,588; "No," 189,728.

Amendment No. 11. Article II, § 35: "Workmen's Compensation." Vote: "Yes," 321,558; "No," 211,772.

Amendment No. 12. Article II, § 36: "Conservation of Natural Resources." Vote: "Yes," 218,192; "No," 191,893.

Amendment No. 13. Article II, § 37: "Eight Hour Day on Public Work." Vote: "Yes," 333,307; "No," 232,898.

Amendment No. 14. Article II, § 38: "Removal of Officials." Vote: "Yes," 347,333; "No," 185,986.

Amendment No. 15. Article II, § 39: "Regulating Expert Testimony in Criminal Trials." Vote: "Yes," 336,987; "No," 185,458.

Amendment No. 16. Article II, § 40: "Registering and Warranting Land Titles." Vote: "Yes," 346,373; "No," 171,807.

Amendment No. 17. Article II, § 41: "Abolishing Prison Contract Labor." Vote: "Yes," 333,034; "No," 215,208.

Amendment No. 18. Article III, § 8: "Limiting Power of General Assembly in Extra Sessions." Vote: "Yes," 319,100; "No," 192,130.

Amendment No. 19. Article IV, §§ 1, 2 and 6: "Change in Judicial System." Vote: "Yes," 264,922; "No," 244,375.

Amendment No. 20. Article IV, §§ 3, 7, 12 and 15: "Judge of Court of Common Pleas for each County." Vote: "Yes," 301,891; "No," 223,287.

Amendment No. 21. Article IV, § 9: "Abolition of Justices of the Peace in Certain Cities." Vote: "Yes," 264,832; "No," 252,936.

Amendment No. 22. Article IV, § 21: "Contempt Proceedings and Injunctions." Vote: "Yes," 240,896; "No," 257,302.

Amendment No. 23. Article V, § 1: "Woman's Suffrage." Vote: "Yes," 249,420; "No," 336,875.

Amendment No. 24. Article V, § 1: "Omitting word 'White.'" Vote: "Yes," 242,735; "No," 265,693.

Amendment No. 25. Article V, § 2: "Use of Voting Machines." Vote: "Yes," 242,342; "No," 288,652.

Amendment No. 26. Article V, § 7: "Primary Elections." Vote: "Yes," 349,801; "No," 183,112.

Amendment No. 27. Article VI, § 3: "Organization of Boards of Education." Vote: "Yes," 298,460; "No," 213,337.

Amendment No. 28. Article VI, § 4: "Creating the Office of Superintendent of Public Instruction to Replace State Commissioner of Common Schools." Vote: "Yes," 256,615; "No," 251,946.

Amendment No. 29. Article VIII, § 1: "To Extend State Bond Limit to Fifty Million Dollars for Inter-county Wagon Roads." Vote: "Yes," 272,564; "No," 274,582.

Amendment No. 30. Article VIII, § 6: "Regulating Insurance." Vote: "Yes," 321,388; "No," 196,628.

Amendment No. 31. Article VIII, § 12: "Abolishing Board of Public Works." Vote: "Yes," 296,635; "No," 214,829.

Amendment No. 32. Article XII, §§ 1, 2, 6, 7, 8, 9, 10 and 11: "Taxation of State and Municipal Bonds, Inheritances, Incomes, Franchises and Production of Minerals." Vote: "Yes," 269,039; "No," 249,864.

Amendment No. 33. Article XIII, § 2: "Regulation of Corporations and Sale of Personal Property." Vote: "Yes," 300,466; "No," 212,704.

Amendment No. 34. Article XIII, § 3: "Double Liability of Bank Stockholders and Inspection of Private Banks." Vote: "Yes," 377,272; "No," 156,688.

Amendment No. 35. Article XV, § 2: "Regulating State Printing." Vote: "Yes," 319,612; "No," 192,378.

Amendment No. 36. Article XV, § 4: "Eligibility of Women to Certain Offices." Vote: "Yes," 261,806; "No," 284,370.

Amendment No. 37. Article XV, § 10: "Civil Service." Vote: "Yes," 306,767; "No," 204,580.

Amendment No. 38. Article XV § 11 "Out-Door Advertising." Vote: "Yes," 261,361; "No," 262,440.

Amendment No. 39. Article XVI, §§ 1, 2, and 3: "Methods of Submitting Amendments to the Constitution." Vote: "Yes," 271,827; "No," 246,687.

Amendment No. 40. Article XVIII, §§ 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14: "Municipal Home Rule." Vote: "Yes," 301,861; "No," 215,120.

Amendment No. 41. "Schedule of Amendments." Vote: "Yes," 275,062; "No," 213,979.

2 Debates, 339, 429-436, 446, 811, 839, 864, 870.

ARTICLE XVII.

ELECTIONS.

SECTION 1. Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years. [As adopted November 7, 1905: 97 v. 640.]

Time for holding.

(As adopted November 7, 1905; 97 v. 640.)

The vote adopting this amendment was "Yes," 702,699; "No," 90,762.

Cited: State, ex rel., v. Mulhern, 74 O. S. 363; Holbrock v. Smedley, 73 O. S. 391; State, ex rel., v. Morrow, 11 O. C. C. (N.S.) 107, 20 O. C. D. 423 [affirmed, without report, State, ex rel., v. Morrow, 78 O. S. 452].

The object of the constitutional amendment, Art. XVII, and of the act of April 16, 1906 (98 v. 271), passed pursuant thereto, was the continuance in office of the incumbents, during the interregnum occasioned thereby, and a sheriff whose term of office was extended under the act is not ineligible, under § 3, of Art. X, of the constitution, to succeed himself for another term: State, ex rel., v. Pontius, 78 O. S. 353.

The express provisions of the constitution of the state establish such relation between the election of state officers and the convening of the general assembly that since Art. VII, adopted in 1905, has expressly changed the date of the election from November of the odd numbered years to the same month of the even numbered years, the provision for the convening of the regular session of the general assembly then elected must be regarded as changed by implication from the first Monday of January, in the even numbered years to the first Monday of the same month in the odd numbered years: State, ex rel., v. Creamer, 83 O. S. 412.

The general provisions of the constitution do not limit conflicting provisions of an amendment to the constitution that are specific and temporary. Section 3, Art. X, of the constitution, that "No person shall be eligible to the office of sheriff, or county treasurer, for more than four years in any period of six years," is not applicable to the act entitled, "An act to conform the terms of office of various state and county officers to the constitutional provisions of [relating to] biennial elections" (98 v. 271): State, ex rel., v. Harris, 77 O. S. 481.

SECTION 2. The term of office of the governor, lieutenant governor, attorney-general, secretary of state and treasurer of state shall be two years, and that of the auditor of state shall be

Terms of officers, vacancies, etc.

Art. XVII, § 2. CONSTITUTION OF THE STATE OF OHIO OF 1851.

four years. The term of office of judges of the supreme court and circuit courts shall be such even number of years not less than six (6) years as may be prescribed by the general assembly; that of the judges of the common pleas court six (6) years and of the judges of the probate court, four (4) years, and that of other judges shall be such even number of years not exceeding six (6) years as may be prescribed by the general assembly. The term of office of justices of the peace shall be such even number of years not exceeding four (4) years, as may be prescribed by the general assembly. The term of office of the members of the board of public works shall be such even number of years not exceeding six (6) years as may be so prescribed; and the term of office of all elective county, township, municipal and school officers shall be such even number of years not exceeding four (4) years as may be so prescribed.

And the general assembly shall have power to so extend existing terms of office as to affect the purpose of section 1 of this article.

Any vacancy which may occur in any elective state office other than that of a member of the general assembly or of governor, shall be filled by appointment by the governor until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election for the office which is vacant, that occurs more than thirty (30) days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term. All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law. [As adopted November 7, 1905: 97 v. 641.]

(As adopted November 7, 1905; 97 v. 641).

The vote adopting this amendment was "Yes," 702,699; "No," 90,762.

Cited: State, ex rel., v. Mulhern, 74 O. S. 363; State, ex rel., v. Morrow, 11 O. C. C. (N.S.) 107, 20 O. C. D. 422 [affirmed, without report, State, ex rel., v. Morrow, 78 O. S. 452]; State, ex rel., v. Metcalfe, 80 O. S. 244.

Section 7, of Art. IV, of the constitution, was in force as to all of its provisions until the close of the election on November 7, 1905, and a person who was elected on that day to succeed himself as probate judge was elected for the term of three years from and after the expiration of the term which he was already holding: State, ex rel., v. Pattison, 73 O. S. 305.

Section 2 of the amendment to the constitution which is now designated as Art. XVII, providing that the term of office of a probate judge shall be four years, applies only to such persons as shall be elected to such office as provided in § 1 of such amendment. Said amendment is not retroactive. Terms of office existing at and before the adoption of the amendment are not restricted or abolished thereby, but existing terms of office may be extended by the general assembly so as to effect the purpose of § 1 of the amendment. The phrase "existing terms of office" means the terms of office as defined in the constitution and acts of the general assembly as they existed at the time of the proposal of the amendment and of its adoption: State, ex rel., v. Pattison, 73 O. S. 305.

Present incumbents.

SECTION 3. Every elective officer holding office when this amendment is adopted, shall continue to hold such office for the full term for which he was elected, and until his successor shall be elected and qualified as provided by law. [As adopted November 7, 1905: 97 v. 641.]

(As adopted November 7, 1905; 97 v. 641).

The vote adopting this amendment was "Yes," 702,699; "No," 90,762.

Cited: State, ex rel., v. Mackelfresh, 9 O. C. C. (N.S.) 324, 19

O. C. D. 499; State, ex rel., v. Morrow, 11 O. C. C. (N.S.) 107, 20 O. C. D. 422 [affirmed, without report, State, ex rel., v. Morrow, 78 O. S. 452].

Article XVII, of the constitution, adopted November 7, 1905, does not expressly repeal or abrogate § 13, of Art. IV, of the constitution, nor is it in conflict therewith; and, applying to the construction of the former section the established rule that repeals by implication are not favored, it follows that the clause of § 13 which provides that where "the office of any judge becomes vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified," remains in force: State, ex rel., v. Metcalfe, 80 O. S. 244.

Where, by the provisions of Art. XVII, of the constitution, the term of an officer in office at the adoption of said article is extended until a successor is elected and qualified, the period between the expiration of his original term and the election and qualification of his successor is as much a part of the incumbent's term of office as the fixed statutory period: State, ex rel., v. Metcalfe, 80 O. S. 244.

This section was not adopted until the close of election on November 7, 1905: State, ex rel., v. Pattison, 73 O. S. 305.

ARTICLE XVIII.

MUNICIPAL CORPORATIONS.

SECTION 1. Municipal corporations are hereby classified [Classification.] into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SECTION 2. General laws shall be passed to provide for the [General and incorporation and government of cities and villages; and additional laws.] laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SECTION 3. Municipalities shall have authority to exercise [Powers.] all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SECTION 4. Any municipality may acquire, construct, own, [Public utilities.] lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SECTION 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract [Public utilities.] with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days

Art.XVIII, § 5. CONSTITUTION OF THE STATE OF OHIO OF 1851.

from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

[Public utilities.]

SECTION 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

[Home rule.]

SECTION 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

[Home rule.]

SECTION 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon, it shall become the charter of such municipality at the time fixed therein. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SECTION **9**. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote. (Adopted September 3, 1912.)

[Home rule.]

Vote: "Yes," 301,861; "No," 215,120.

SECTION **10**. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law. (Adopted September 3, 1912.)

[Appropriation in excess of public use.]

Vote: "Yes," 301,861; "No," 215,120.

SECTION **11**. Any municipality appropriating private property for a public improvement may provide money therefore in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited shall in no case be levied for more than fifty per centum of the cost of such appropriation. (Adopted September 3, 1912.)

[Assessments for cost of appropriating property.]

Vote: "Yes," 301,861; "No," 215,120.

SECTION **12**. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure. (Adopted September 3, 1912.)

[Bonds for public utilities.]

Vote: "Yes," 301,861; "No," 215,120.

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[Taxation, debts,
reports and
accounts.]

SECTION 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

[Elections.]

SECTION 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SCHEDULE.

If the foregoing amendment to the constitution be adopted by the electors and become a part of the constitution, it shall take effect on November 15, 1912. (Adopted September 3, 1912.)

Vote: "Yes," 301,861; "No," 215,120.

SCHEDULE.

Of prior laws.

SECTION 1. All laws of this state, in force on the first day of September one thousand eight hundred and fifty-one, not inconsistent with this constitution, shall continue in force, until amended, or repealed. (*See Const. 1802, Sched. § 4.*)

See Const. 1802, Schedule, § 4.

Cited: State, ex rel., v. Trustees, 8 O. S. 394; Allbyer v. State, 10 O. S. 589; Cable v. Alvord, 27 O. S. 654; Lyon v. Lyon, 1 O. C. C. (N.S.) 246, 14 O. C. D. 498.

The new constitution of Ohio created no new state. It only altered, in some respects, the fundamental law of a state already in existence; and even this was done pursuant to the prior constitution, under whose provisions the convention was called, and the new constitution framed: Cass v. Dillon, 2 O. S. 607.

All laws in force when the constitution of 1851 took effect, and which were not inconsistent with it, remained in force without an express provision to that effect; and all inconsistent laws fell simply because they were inconsistent; in other words, all repugnant laws were repealed by implication: Cass v. Dillon, 2 O. S. 607.

The repugnancy which must cause a law to fall must be necessary and obvious. If by any fair course of reasoning the law and the constitution can be reconciled, the law must stand: Railroad v. Commissioners, 1 O. S. 77; State, ex rel., v. Dudley, 1 O. S. 437; Cass v. Dillon, 2 O. S. 607; Hill v. Higdon, 5 O. S. 243; Armstrong v. Treasurer, 10 O. 225; Goshorn v. Purcell, 11 O. S. 641.

The English common law, so far as it is reasonable in itself, suitable to the condition and business of our people, and consistent with the letter and spirit of our federal and state constitutions and statutes, has been and is followed by our courts, and may be said to constitute a part of the common law of Ohio. But wherever it has been found wanting in either of these requisites, our courts have not hesitated to modify it to suit our circumstances, or, if necessary, wholly to depart from it: Bloom v. Richards, 2 O. S. 387.

The laws of a conquered country being held to remain in force until repealed, so far as they are consistent with the government of the conquerors, a fortiori must it be held, that the laws of a state survive a peaceable change of its constitution, effected by its own people, and not varying the general structure of the government, to the full extent to which they are consistent with the new order of things: Cass v. Dillon, 2 O. S. 607.

The rule, that repeals by implication are not favored, is applicable to the inquiry, whether any particular enactment has ceased to be in force on account of repugnancy to the new constitution: *State, ex rel., v. Dudley*, 1 O. S. 437; approved, *Cass v. Dillon*, 2 O. S. 607.

The "free banking act" of March 21, 1851 (G. C. § 9676), though passed eleven days after the adoption of the constitution by the convention, would by virtue of § 1, of the schedule, remain in force and thus extend the privilege of this system of banking for twenty-one years: *State v. Gibbs*, 7 O. N. P. (N.S.) 345; see, also, Art. IV, § 1, constitution of 1851.

2 Debates, 804, 818, 819, 844, 847, 864, 870.

SECTION 2. The first election for members of the general assembly, under this constitution, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one.

The first election of members of general assembly.

Cited: *State, ex rel., v. Creamer*, 83 O. S. 412.

2 Debates, 804, 817-819, 844, 847, 864, 870.

SECTION 3. The first election for governor, lieutenant governor, auditor, treasurer, and secretary of state and attorney general, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one. The persons, holding said offices on the first day of September, one thousand eight hundred and fifty-one, shall continue therein, until the second Monday of January, one thousand eight hundred and fifty-two.

For state officers.

2 Debates, 804, 817-819, 843, 844, 847, 864, 870

SECTION 4. The first election for judges of the supreme court, courts of common pleas, and probate courts, and clerks of the courts of common pleas, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one, and the official term of said judges and clerks, so elected, shall commence on the second Monday of February, one thousand eight hundred and fifty-two. Judges and clerks of the courts of common pleas and supreme court, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office with their present powers and duties, until the second Monday of February, one thousand eight hundred and fifty-two. No suit or proceeding, pending in any of the courts of this state, shall be affected by the adoption of this constitution. (*See Art. IV, § 7, note 2; § 13, note.*)

For judges, clerks, etc.

Cited: *State, ex rel., v. Governor*, 7 O. S. 372; *State, ex rel., v. Taylor*, 15 O. S. 137; *State, ex rel., v. McCracken*, 51 O. S. 123.

2 Debates,, 804, 817-819, 844, 847, 864, 870.

SECTION 5. The register and receiver of the land office, directors of the penitentiary, directors of the benevolent institutions of the state, the state librarian, and all other officers, not otherwise provided for in this constitution, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until their terms expire, respectively, unless the general assembly shall otherwise provide.

What officers to continue in office until the expiration of their term.

2 Debates, 804, 817-819, 844, 847, 864, 865, 870.

SECTION 6. The superior and commercial courts of Cincinnati, and the superior court of Cleveland, shall remain, until otherwise provided by law, with their present powers and jurisdiction; and the judges and clerks of said courts, in office

As to certain courts.

Schedule, § 6. CONSTITUTION OF THE STATE OF OHIO OF 1851.

on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until the expiration of their terms of office, respectively, or, until otherwise provided by law; but neither of said courts shall continue after the second Monday of February, one thousand eight hundred and fifty-three; and no suits shall be commenced in said two first mentioned courts, after the second Monday of February, one thousand eight hundred and fifty-two, nor in said last mentioned court, after the second Monday in August, one thousand eight hundred and fifty-two; and all business in either of said courts, not disposed of within the time limited for their continuance as aforesaid, shall be transferred to the court of common pleas.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

County and township officers.

SECTION 7. All county and township officers and justices of the peace, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office until their terms expire, respectively.

Cited: *Shepler v. Dewey*, 1 O. S. 331; *State, ex rel., v. Howe*, 25 O. S. 588.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

Vacancies.

SECTION 8. Vacancies in office, occurring after the first day of September, one thousand eight hundred and fifty-one, shall be filled, as is now prescribed by law, and until officers are elected or appointed, and qualified, under this constitution.

Cited: *State, ex rel., v. Howe*, 25 O. S. 588.

2 Debates, 804, 817, 819, 844, 847, 865, 870.

When constitution shall take effect.

SECTION 9. This constitution shall take effect, on the first day of September, one thousand eight hundred and fifty-one.

"The constitution must receive the same construction since its ratification by the people that it would have received when it passed from the hands of the convention. As a necessary result from this principle, things as they existed on the tenth of March, when it was adopted by the convention, must control in its construction. In short, the instrument speaks from the tenth of March, although, by its own terms, its effect was postponed to the first of September, and none the less so because the approval of the people was made necessary to its ultimate effect. They but ratified and approved an act already done by their representatives in convention, and were not, in any correct sense, the authors of the act itself": *State, ex rel., v. Dudley*, 1 O. S. 437.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

Term of office.

SECTION 10. All officers shall continue in office, until their successors shall be chosen and qualified. (*See Const. 1802, Sched. § 3.*)

See Const. 1802, Schedule, § 3.

Cited: *State, ex rel., v. Howe*, 25 O. S. 588.

This section was not intended as a permanent provision of the constitution, and as such applicable to officers chosen under it, but was limited, in its application, to officers chosen or appointed under the old constitution, and whose term of office did not expire until after the taking effect of the new constitution: *State v. Taylor*, 15 O. S. 137.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

Transfer of suits.

SECTION 11. Suits pending in the supreme court in bank, shall be transferred to the supreme court provided for in this constitution, and be proceeded in according to law.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

SECTION 12. The district courts shall, in their respective counties, be the successors of the present supreme court; and all suits, prosecutions, judgments, records, and proceedings, pending and remaining in said supreme court, in the several counties of any district, shall be transferred to the respective district courts of such counties, and be proceeded in, as though no change had been made in said supreme court. Same subject.

Cited: *Shepler v. Dewey*, 1 O. S. 331; *Ohio v. Kelley*, 25 O. S. 29; *Webster v. State*, 43 O. S. 696.

2 Debates, 804, 817-819, 844, 847, 865, 870.

SECTION 13. The said courts of common pleas, shall be the successors of the present courts of common pleas in the several counties, except as to probate jurisdiction; and all suits, prosecutions, proceedings, records and judgments, pending or being in said last mentioned courts, except as aforesaid, shall be transferred to the courts of common pleas created by this constitution, and proceeded in, as though the same had been therein instituted. Same subject.

Cited: *Shepler v. Dewey*, 1 O. S. 331.

2 Debates, 804, 818, 819, 844, 847, 865, 870.

SECTION 14. The probate courts provided for in this constitution, as to all matters within the jurisdiction conferred upon said courts, shall be the successors, in the several counties, of the present courts of common pleas; and the records, files, and papers, business and proceedings, appertaining to said jurisdiction, shall be transferred to said courts of probate, and be there proceeded in, according to law. Same subject.

2 Debates, 804, 817-819, 844, 847, 865, 870.

SECTION 15. Until otherwise provided by law, elections for judges and clerks shall be held, and the poll books returned, as is provided for governor, and the abstract therefrom, certified to the secretary of state, shall be by him opened, in the presence of the governor, who shall declare the result, and issue commissions to the persons elected. Judges and clerks,
how elected, etc.

Cited: *State v. Barbee*, 45 O. S. 347.

2 Debates, 844, 847, 865, 870.

SECTION 16. Where two or more counties are joined in a senatorial, representative, or judicial district, the returns of elections shall be sent to the county, having the largest population. Election returns,
where sent.

2 Debates, 782, 847, 865, 870.

SECTION 17. The foregoing constitution shall be submitted to the electors of the state, at an election to be held on the third Tuesday of June, one thousand eight hundred and fifty-one, in the several election districts of this state. The ballots at such election shall be written or printed as follows: Those in favor of the constitution, "New Constitution, Yes;" those against the constitution, "New Constitution, No." The polls at said election shall be opened between the hours of eight and ten o'clock A. M., and closed at six o'clock P. M.; and the said election shall be conducted, and the returns thereof Constitution sub-
mitted to the
electors of the
state, etc.

Schedule, § 17. CONSTITUTION OF THE STATE OF OHIO OF 1851.

made and certified, to the secretary of state, as provided by law for annual elections of state and county officers. Within twenty days after such election, the secretary of state shall open the returns thereof, in the presence of the governor; and, if it shall appear that a majority of all the votes, cast at such election, are in favor of the constitution, the governor shall issue his proclamation, stating that fact, and said constitution shall be the constitution of the state of Ohio, and not otherwise.

The result of this election, excluding the returns of two counties, Defiance and Auglaize, which were not received in the twenty days specified, was as follows:

"New Constitution, Yes"	125,564
"New Constitution, No"	109,276

Majority for New Constitution.....	16,288
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2 Debates, 805, 813-815, 819, 824, 844, 847, 848, 865, 870.

License to traffic
in intoxicating
liquors.

SECTION 18. At the time when the votes of the electors shall be taken for the adoption or rejection of this constitution, the additional section, in the words following, to wit: "No license to traffic in intoxicating liquors shall hereafter be granted in this state; but the general assembly may, by law, provide against evils resulting therefrom," shall be separately submitted to the electors for adoption or rejection, in form following, to wit: A separate ballot may be given by every elector and deposited in a separate box. Upon the ballots given for said separate amendment shall be written or printed, or partly written and partly printed, the words: "License to sell intoxicating liquors, Yes;" and upon the ballots given against said amendment, in like manner, the words: "License to sell intoxicating liquors, No." If, at the said election, a majority of all the votes given for and against said amendment, shall contain the words: "License to sell intoxicating liquors, No," then the said amendment shall be a separate section of article fifteen of the constitution.

This election resulted:

"License to sell intoxicating liquors, No".....	113,237
"License to sell intoxicating liquors, Yes".....	104,255

Majority against License.....	8,982
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Cited: Driggs v. State, 52 O. S. 37; Arnold v. Van Wert, 3 O. C. C. 545, 2 O. C. D. 314; Schmeltz v. State, 8 O. C. C. 82, 4 O. C. D. 287; Starling v. Bowling Green, 5 O. C. C. (N.S.) 217, 16 O. C. D. 581; Brewing Co. v. Demko, 9 O. C. C. (N.S.) 130, 19 O. C. D. 102; Brewing Co. v. Beck, 10 O. C. C. (N.S.) 361, 20 O. C. D. 226.

This clause expressly authorized §§ 1, 2, 4, 8, of the act of May 1, 1854 (52 v. 153), "to provide against the evils resulting from the sale of intoxicating liquors in the state of Ohio": Miller v. State, 3 O. S. 475.

The constitutionality of a statute depends upon its operation and effect, and not upon the form it may be made to assume. A license is permission granted by some competent authority to do an act which, without such permission, would be illegal. The act of April 5, 1882, which requires every person engaged, or engaging in such traffic to pay a specified sum of money annually, and to execute a bond, as therein required; and also provides that "every person who shall engage or continue in such traffic, without having executed the bond * * * or, after his bond shall have been adjudged forfeited * * * shall be deemed guilty of a misdemeanor," is, in its operation and effect, as to the traffic not already prohibited, a license, within this section, and void: State v. Hipp, 38 O. S. 199.

The statute of April 17, 1883, commonly known as the Scott law, and entitled, "an act further to provide against evils resulting from the traffic in intoxicating liquors," authorizing assessments upon the business of trafficking in intoxicating liquors, is a valid and constitutional enactment: State, ex rel., v. Frame, 39 O. S. 399.

CONSTITUTION OF THE STATE OF OHIO OF 1851. Schedule, § 18.

The Scott law (80 v. 164), as far as it provided for a lien upon real property occupied by one who sold intoxicating liquors, was said to be in effect a license and therefore unconstitutional: Butzman v. Whitbeck, 42 O. S. 223; see, also, State v. Sinks, 42 O. S. 345; King v. Cappeller, 42 O. S. 218.

It is competent to the general assembly of the state to impose a tax on the business of trafficking in intoxicating liquors as a means of providing against the evils resulting therefrom. Neither the tax so imposed nor a provision that the same shall attach as a lien on the property in which it is conducted, constitutes a license within the meaning of Art. XIV, § 9, of the constitution: Adler v. Whitbeck, 44 O. S. 539.

A statute which excludes from the business of dealing in intoxicating liquors, persons who are unable to make certain specified answers to certain specified questions concerning the character of the saloons operated by such persons (G. C. § 6083) is not a license act, and is not forbidden by this section: Bloomfield v. State, 86 O. S. 253.

Section 18 of the Schedule applies as well to the wholesale as to the retail traffic in intoxicating liquors: Senior v. Ratterman, 44 O. S. 661.

The general assembly has power (except as limited by § 18 of the Schedule to the constitution) to regulate occupations by license, and to compel, by imposition of a fine, payment of a reasonable fee, where a special benefit is conferred by the public upon those who follow an occupation, or where the occupation imposes special burdens on the public, or where it is injurious or dangerous to the public: Marmet v. State, 45 O. S. 63.

The "township local option law" is constitutional (see G. C. § 6119, et seq.): Gordon v. State, 46 O. S. 607.

It is a question for the judgment of the legislature, under this section, to determine what are the best means to provide against the evils resulting from the traffic in intoxicating liquors: Lloyd v. Dollisin, 3 O. C. C. (N.S.) 328, 13 O. C. D. 571 [affirmed, without report, State, ex rel., v. Dollison, 68 O. S. 688].

The provision of § 4364-12, making any balance of the Dow tax, left after the sale of the chattels of a tenant for nonpayment, a lien upon the premises where the liquor is sold, is unconstitutional and void as to landlord who has covenanted against such sales and ignorant that they were being made, and the sales were in fact made in a dwelling house secretly to guests: Foley v. Roth, 8 O. N. P. (N.S.) 425.

The Dow tax is valid and operative in a county which has been voted "dry" under the Rose county local option law: Reider v. Davis, 10 O. N. P. (N.S.) 177, 20 O. D. (N.P.) 407.

The fact that saloons are already in existence does not prevent the legislature from forbidding the sale of intoxicating liquor: Columbus v. Jeffrey, 2 O. N. P. (N.S.) 85, 14 O. D. (N.P.) 609.

The provision of this section has stood since its adoption as a perpetual admonition to all persons engaging in the traffic that in doing so, they place their property invested in the business subject to the power of the general assembly to provide against evils resulting from the traffic: Gassman v. Kerns, 19 O. D. (N.P.) 317.

The act "to prohibit the furnishing or giving away of food without charge in any place in this state where intoxicating liquors are sold (101 v. 357; G. C. § 13224-1, et seq.) is unconstitutional: State v. Foucar, 8 O. L. R. 317.

General Code § 13206, which forbids the sale of intoxicating liquor within two miles of agricultural fairs, is held to be constitutional in the form in which it applied to persons who were permanently located within such distance of such fair: Heck v. State, 44 O. S. 536.

2 Debates, 362, 436-461, 694, 695, 711-723, 726, 788, 789, 793, 805, 848, 865, 870.

SECTION 19. The apportionment of the house for representatives, during the first decennial period under this constitution, shall be as follows:

Apportionment
for house of
representatives.

See Schedule, § 9.

Cited: State, ex rel., v. Dudley, 1 O. S. 437.

1 Debates, 460; 2 Debates, 7, 708, 782, 783, 822, 823, 848, 865, 866, 870

The counties of Adams, Allen, Athens, Auglaize, Carroll, Champaign, Clark, Clinton, Crawford, Darke, Delaware, Erie, Fayette, Gallia, Geauga, Greene, Hancock, Harrison, Hocking,

Schedule, § 19. CONSTITUTION OF THE STATE OF OHIO OF 1851.

Holmes, Lake, Lawrence, Logan, Madison, Marion, Meigs, Morrow, Perry, Pickaway, Pike, Preble, Sandusky, Scioto, Shelby and Union, shall, severally, be entitled to one representative, in each session of the decennial period.

The counties of Franklin, Licking, Montgomery, and Stark, shall each be entitled to two representatives, in each session of the decennial period.

The counties of Ashland, Coshocton, Highland, Huron, Lorain, Mahoning, Medina, Miami, Portage, Seneca, Summit, and Warren, shall, severally, be entitled to one representative, in each session; and one additional representative in the fifth session of the decennial period.

The counties of Ashtabula, Brown, Butler, Clermont, Fairfield, Guernsey, Jefferson, Knox, Monroe, Morgan, Richland, Trumbull, Tuscarawas, and Washington, shall, severally, be entitled to one representative, in each session; and two additional representatives, one in the third, and one in the fourth session of the decennial period.

The counties of Belmont, Columbiana, Ross and Wayne, shall, severally, be entitled to one representative, in each session; and three additional representatives, one in the first, one in the second, and one in the third session of the decennial period.

The county of Muskingum shall be entitled to two representatives, in each session; and one additional representative, in the fifth session, of the decennial period.

The county of Cuyahoga shall be entitled to two representatives, in each session; and two additional representatives, one in the third, and one in the fourth session of the decennial period.

The county of Hamilton shall be entitled to seven representatives, in each session; and four additional representatives, one in the first, one in the second, one in the third, and one in the fourth session, of the decennial period.

The following counties, until they shall have acquired a sufficient population to entitle them to elect, separately, under the fourth section of the eleventh article, shall form districts in manner following, to wit: The counties of Jackson and Vinton, one district; the counties of Lucas and Fulton, one district; the counties of Wyandot and Hardin, one district; the counties of Mercer and Van Wert, one district; the counties of Paulding, Defiance, and Williams, one district; the counties of Putnam and Henry, one district; and the counties of Wood and Ottawa, one district; each of which districts shall be entitled to one representative, in every session of the decennial period.

Done in convention, at Cincinnati, the tenth day of March, in the year of our Lord, one thousand eight hundred and fifty-one, and of the independence of the United States, the seventy-fifth.

WILLIAM MEDILL, *President*.

Attest: WM. H. GILL, *Secretary*.

CONSTITUTION OF THE STATE OF OHIO OF 1851. Schedule, § 20.

S. J. ANDREWS,
EDWARD ARCHBOLD,
WILLIAM BARBEE,
JOSEPH BARNETT,
DAVID BARNET,
WM. S. BATES,
A. I. BENNETT,
JOHN H. BLAIR,
JACOB BLICKENSDECKER,
VAN BROWN,
A. G. BROWN,
R. W. CAHILL,
F. CASE,
L. CASE,
DAVID CHAMBERS,
JOHN CHANY,
H. D. CLARK,
GEORGE COLLINGS,
FRIEND COOK,
OTWAY CURRY,
G. VOLNEY DORSEY,
THOS. W. EWART,
JOHN EWING,
JOSEPH M. FARR,
ELIAS FLORENCE,
ROBERT FORBES,
H. C. GRAY,
H. N. GILLETT,
JOHN GRAHAM,
JOHN L. GREEN,
JACOB J. GREENE,
HENRY H. GREGG,
W. S. GROESBECK,
C. S. HAMILTON,
D. D. T. HARD,
A. HARLAN,
WILLIAM HAWKINS,
JAMES P. HENDERSON,
PETER HITCHCOCK,
G. W. HOLMES,
GEO. B. HOLT,
JOHN J. HOOTMAN,
V. B. HORTON,
SAMUEL HUMPHREVILLE,
JOHN E. HUNT,
B. B. HUNTER,
REUBEN HITCHCOCK,
JOHN JOHNSON,
J. DAN JONES,
JAMES B. KING,
S. J. KIRKWOOD,
THOS. J. LARSH,

WILLIAM LAWRENCE,
JOHN LARWILL,
ROBERT LEECH,
D. P. LEADBETTER,
JOHN LIDEY,
JAMES LOUDON,
J. MCCORMICK,
H. S. MANON,
SAMSON MASON,
MATTHEW H. MITCHELL,
ISAIAH MORRIS,
CHARLES MCCLOUD,
SIMEON NASH,
S. F. NORRIS,
CHAS. J. ORTON,
W. S. C. OTIS,
THOMAS PATTERSON,
DANL. PECK,
JACOB PERKINS,
SAML. QUIGLEY,
R. P. RANNEY,
CHAS. REEMELIN,
ADAM N. RIDDLE,
EDWARD C. ROLL,
WM. SAWYER,
SABIRT SCOTT,
JOHN SELLERS,
JOHN A. SMITH,
GEORGE J. SMITH,
B. P. SMITH,
HENRY STANBERY,
B. STANTON,
ALBERT V. STEBBINS,
E. T. STICKNEY,
RICHD. STILLWELL,
HARMAN STIDGER,
JAMES STRUBLE,
J. R. SWAN,
L. SWIFT,
JAMES W. TAYLOR,
NORTON S. TOWNSHEND,
HUGH THOMPSON,
JOSEPH THOMPSON,
JOSEPH VANCE,
ELIJAH VANCE,
WM. M. WARREN,
THOMAS A. WAY,
J. MILTON WILLIAMS,
ELZEY WILSON,
JAS. T. WORTHINGTON,
E. B. WOODBURY.

SCHEDULE TO CONSTITUTIONAL AMENDMENTS SUBMITTED ON
SEPTEMBER 3, 1912.

[SECTION 20.] The several amendments passed and submitted
by this convention when adopted at the election shall take effect

Schedule, § 21. CONSTITUTION OF THE STATE OF OHIO OF 1851.

on the first day of January, 1913, except as otherwise specifically provided by the schedule attached to any of said amendments. All laws then in force, not inconsistent therewith shall continue in force until amended or repealed; provided that all cases pending in the courts on the first day of January, 1913, shall be heard and tried in the same manner and by the same procedure as is now authorized by law. Any provision of the amendments passed and submitted by this convention and adopted by the electors, inconsistent with, or in conflict with, any provision of the present constitution, shall be held to prevail. (Adopted September 3, 1912.)

Vote: "Yes," 275,062; "No," 213,979.

Method
of submission.

[SECTION 21.] The several proposals duly passed by this convention shall be submitted to the electors as separate amendments to the constitution at a special election to be held on the third day of September, 1912. The several amendments shall be designated on the ballot by their proper article and section numbers and also by their approved descriptive titles and shall be printed on said ballot and consecutively numbered in the manner and form hereinafter set forth. The adoption of any amendment by its title shall have the effect of adopting the amendment in full as finally passed by the convention. Said special election shall be held pursuant to all provisions of law applicable thereto including special registration. Ballots shall be marked in accordance with instructions printed thereon. Challengers and witnesses shall be admitted to all polling places under such regulations as may be prescribed by the secretary of state. Within ten days after said election the boards of deputy state supervisors of elections of the several counties shall forward by mail in duplicate sealed certified abstracts of the votes cast on the several amendments, one to the secretary of state and one to the auditor of state at Columbus. Within five days thereafter such abstracts shall be opened and canvassed by the secretary of state and auditor of state in the presence of the governor who shall forthwith, by proclamation, declare the results of said election. Each amendment on which the number of affirmative votes shall exceed the number of negative votes shall become part of the constitution.

HERBERT S. BIGELOW,
C. B. GALBREATH, PRESIDENT.
SECRETARY,

Columbus, Ohio, June 1, 1912.

DAVID F. ANDERSON,
ERNEST I. ANTRIM,
JOHN L. BAUM,
ROBERT A. BEATTY,
A. BEYER,
STANLEY E. BOWDLE,
WESLEY B. BRATTAIN,
H. M. BROWN,
WALTER F. BROWN,
M. A. BROWN,

WILLIAM W. CAMPBELL,
JOHN R. CASSIDY,
M. T. CODY,
BERNARD Y. COLLETT,
GEO. H. COLTON,
HENRY F. CORDES,
HENRY M. CRITES,
ROBERT CROSSER,
DAVID CUNNINGHAM,
WILLIAM C. DAVIO,

JOE DEFREES,
 A. V. DONAHEY,
 EDWARD W. DOTY,
 CHARLES O. DUNLAP,
 ALEXANDER DUNN,
 DENNIS DWYER,
 HENRY E. EBY,
 J. MILTON EARNHART,
 HENRY W. ELSON,
 JOHN D. FACKLER,
 W. W. FARNSWORTH,
 THOMAS S. FARRELL,
 S. D. FESS,
 THOS. G. FITZSIMONS,
 JAMES M. FLUKE,
 HENRY C. FOX,
 AARON HAHN,
 WM. P. HALENKAMP,
 JAMES W. HALFHILL,
 JAMES W. HARBARGER,
 WM. S. HARRIS,
 GEO. W. HARRIS,
 OTTO M. HARTER,
 ISAAC HARTER,
 ROBERT HENDERSON,
 JOHN C. HOFFMAN,
 CHARLER D. HOLTZ,
 SAMUEL A. HOSKINS,
 FRANK G. HURSH,
 EDWARD W. JOHNSON.
 SOLOMON JOHNSON,
 HUMPIREY JONES,
 J. W. KEHOE,
 HENRY C. KELLER,
 FRANK H. KERR,
 WM. B. KILPATRICK,
 E. B. KING,
 G. W. KNIGHT,
 JOHN F. KRAMER,
 LAWRENCE P. KUNKLE,
 FRANK P. LAMBERT,
 E. L. LAMPSON,
 FRED G. LEETE,
 DANIEL E. LESLIE,
 ROBERT B. LONGSTRETH,
 CHRIS LUDEY,
 FLETCHER D. MALIN,
 FRANK M. MARRIOTT,

ALLEN M. MARSHALL,
 N. E. MATTHEWS,
 ROSCOE J. MAUCK,
 R. G. MCCLELLAND,
 GEO. W. MILLER,
 FRANK P. MILLER,
 WM. MILLER,
 ILLION E. MOORE,
 CALEB H. NORRIS,
 DAVID J. NYE,
 J. A. OKEY,
 W. E. PARTINGTON,
 HIRAM D. PECK,
 EDWARD A. PETERS,
 DAVID PIERCE,
 GEO. W. PETTIT,
 T. D. PRICE,
 A. ROSS READ,
 HORACE G. REDINGTON,
 JNO. H. RILEY,
 WM. M. ROCKEL,
 JOHN ROEHM,
 JOHN C. RORICK,
 STANLEY SHAFFER,
 ELI D. SHAW,
 H. K. SMITH,
 STARBUCK SMITH,
 J. C. SOLETHIER,
 FRANKLIN J. STALTER,
 M. STAMM,
 W. B. STEVENS,
 O. H. STEWART,
 STEPHEN S. STILLWELL,
 WILLIAM WORTH STOKES,
 FRANK TAGGART,
 JAMES C. TALLMAN,
 J. W. TANNEHILL,
 PERCY TETLOW,
 HARRY D. THOMAS,
 JOHN ULMER,
 EDWIN T. WAGNER,
 WILMER R. WALKER,
 HARVEY WATSON,
 BENJ. F. WEYBRECHT,
 JOHN W. WINN,
 FRANK C. WISE,
 F. W. WOODS,
 WM. WORTHINGTON.

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The Constitutions

OF THE

United States

AND OF THE

State of Ohio

1913

Thoroughly Annotated and Indexed

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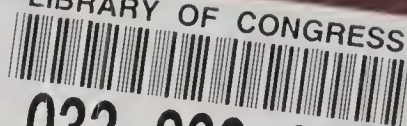
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